

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT COMPANY,

Respondent.

DOCKET UE-161204

COMMISSION STAFF'S MOTION
FOR CLARIFICATION

I. INTRODUCTION

1 On October 12, 2017, the Commission issued its Final Order 06 in this docket. Staff supports the fair and balanced decision the Commission reached in that order, which decided the heavily contested and difficult questions presented to the Commission by the parties. Subsequent events, however, show the possibility of litigants in other dockets, or reviewing courts, misunderstanding the order. Accordingly, pursuant to WAC 480-07-835, Commission Staff (“Staff”) moves for clarification of the memorandum opinion, findings of fact, and conclusions of law of Order 06 that concern the regulatory compact. The regulatory compact is not a statutory construct that confers affirmative rights on a regulated utility.

II. RELIEF REQUESTED

2 Staff requests that the Commission;

- Clarify that Order 06 does not enforce a regulatory compact containing affirmative legal rights arising outside of Washington statute;

- Revise Conclusion of Law No. 3 as follows: “Pursuant to ~~the regulatory compact~~ **RCW 80.28.110**, Pacific Power has an obligation to serve and, therefore, an expectation of continued service.

III. STATEMENT OF ISSUES

3 Should the Commission clarify Order 06 in this docket?

IV. STATEMENT OF FACTS

4 On November 14, 2016, Pacific Power & Light Company (Pacific Power) filed revisions to its currently effective Tariff WN U-75, Rules 1, 4, and 6, and Schedule 300, the provisions that contain Pacific Power’s so-called net removal tariff. That tariff governs the customer disconnection, including the fees that a customer must pay when severing its relationship with Pacific Power. The proposed amendments would have changed the fees applicable upon disconnection and required departing customers to pay an additional fee to cover costs ostensibly stranded by a customer’s departure.

5 After a full adjudication involving a number of parties and intervenors, the Commission issued its Final Order in this docket, Order 06, on October 12, 2017.¹ The Commission, in entering that order, rejected Pacific Power’s as-filed tariffs and authorized and ordered the company to file an amended tariff consistent with the Commission’s memorandum opinion.² One issue raised by the parties and decided by the Commission in Order 06 has relevance to Staff’s motion.

¹ See generally, *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Docket No. UE-161204, Order 06, at 1 (Oct. 12, 2017) (hereinafter “Order 06”).

² Order 06 at 45 ¶ 214.

6 The parties to these dockets had strongly contested the applicability of the regulatory compact to Pacific Power’s filing.³ The Commission concluded that it did.⁴ The Commission’s memorandum opinion noted its responsibility for enforcing the regulatory compact, and it appears to have based its understanding of the regulatory compact on the public service laws.⁵

7 Six days after the Commission entered Order 06, on October 18, 2017, the parties to another pair of dockets, UE-170033 and UG-170034, submitted their initial briefs. One of those briefs cited Order 06 for legal authority supporting the proposition that the regulatory compact compelled certain actions.⁶

V. EVIDENCE RELIED UPON

8 Staff relies upon the record in this matter.

VI. APPLICABLE LEGAL STANDARDS

9 The Commission’s procedural rules allow parties who do “not seek to change the outcome with respect to an issue” to file a motion for clarification of a final order within 10 days of service of the order.⁷

VII. ARGUMENT

10 Staff asks the Commission to clarify Order 06 to confirm Staff’s understanding of that order in one respect. Staff asks the Commission to clarify that when it spoke of enforcing the regulatory compact in Order 06, it spoke of enforcing the public service laws, rather than enforcing affirmative legal rights and responsibilities not found in statute.

³ See Order 06 at 14-16 ¶¶ 60-67.

⁴ See Order 06 at 16-18 ¶¶ 68-72.

⁵ See Order 06 at 16-18 ¶¶ 68-72.

⁶ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-170033 & UG-170034, Initial Post-Hearing Br. of the Indus. Customers of NW Utils., at 2-3 ¶ 3 (Oct. 18, 2017).

⁷ WAC 480-07-835(1).

11 “[The Commission] is an administrative agency created by statute and as such has no inherent powers, but only such as have been expressly granted to it by the legislature or have, by implication, been conferred upon it as necessarily incident to the exercise of those powers expressly granted.”⁸ Any Commission action that oversteps its delegated legal authority is deemed void on the basis that no power to act existed.⁹

12 Staff understands Order 06 to set out the Commission’s commitment to enforcing the public service laws. The legislature, in delegating power to the Commission, directed it to “[r]egulate in the public interest, *as provided in the public service laws*,” any entity providing utility service in the state of Washington.¹⁰ The public service laws obligate the Commission to uphold the aspects of the regulatory compact discussed in Order 06, including: the utility’s obligation to serve, RCW 80.28.110; the utility’s obligation to furnish safe, reasonable, and adequate service, RCW 80.28.010; the utility’s right to compensatory rates, RCW 80.28.010, .020; and customers’ rights to fair, just, and reasonable rates that are not unduly discriminatory or unduly preferential; RCW 80.28.010, .020, .090, .100. Given that framework, Staff does not understand the Commission to have provided that it will enforce affirmative rights or obligations arising from outside of Washington statute despite its discussion of “enforcing the regulatory compact.”¹¹

13 Staff is concerned that, without clarification, parties in other dockets may interpret Order 06 as supporting intangible and amorphous rights or obligations that the Commission must enforce as a matter of law. Or, more worryingly, a reviewing court may misread the

⁸ *State ex rel. Pub. Util. Dist. No. 1 of Okanogan Cnty. v. Dep’t of Pub. Serv.*, 21 Wn.2d 201, 208-09 (1944).

⁹ *S. Tacoma Way, LLC v. State*, 169 Wn.2d 118, 123 (2010).

¹⁰ RCW 80.01.040(3) (emphasis added).

¹¹ Order 06 at 17 ¶ 72; See also at 43 ¶ 193.

Commission's order and reverse it after deciding that the order amounts to Commission action that oversteps its delegated legal authority.

VIII. CONCLUSION

14 For the reasons stated above, the Commission should clarify its final order in this matter.

DATED this 23rd day of October 2017.

Respectfully submitted,

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