

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

THE WALLA WALLA COUNTRY
CLUB,

Complainant,

v.

PACIFICORP, d/b/a PACIFIC POWER &
LIGHT CORP.

Respondent.

Docket No. UE-_____

COMPLAINT OF THE WALLA
WALLA COUNTRY CLUB

I. PARTIES

1 Complainant the Walla Walla Country Club (the “**Club**”) is a corporation authorized to do business in the State of Washington. The Club owns and operates a country club, consisting of a golf course, dining facilities, tennis courts, pools, and attendant amenities and receives electric service from PacifiCorp. The full names and addresses of the Club and the Club’s attorneys are:

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Respondent PacifiCorp (or the “**Company**”) is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010 and used in Title 80 RCW. PacifiCorp is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation, and is subject to the jurisdiction of the Washington Utilities and Transportation Commission (the “**Commission**”). The full names and addresses of PacifiCorp and PacifiCorp’s attorneys are:

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II. RULES AND STATUTES

2 Statutes and rules that may be at issue in this complaint include: RCW 80.01.040,
80.04.110, 80.04.220, 80.04.230, 80.28.010, and 80.28.020, and WAC 480-07-370.

III. INTRODUCTION

3 Pursuant to RCW 80.04.110 and WAC 480-07-370, the Club brings this Complaint
against PacifiCorp, and requests the Commission compel the Company to disconnect its facilities
from Club property, and order damage reparations and/or a refund to the Club as described

below. PacifiCorp has violated Commission order and statute in refusing to provide disconnection under Commission-approved terms and fees, as mandated under Company tariff rules.

4 Specifically, Rule 6 of the Company's Net Removal Tariff states the costs and conditions under which a customer is required to pay for facility removal associated with permanent disconnection. Notwithstanding, since at least December 2012, PacifiCorp has refused to disconnect the Club from Company service unless the Club agrees to pay facility removal costs that are both unwarranted and grossly in excess of those permitted under the Net Removal Tariff. Consequently, the Club has been unable to change utility service providers, resulting in monthly power payments to PacifiCorp which exceed those that the Club would have paid under rates from an alternate power provider, Columbia Rural Electric Association ("CREA"). The Club should be allowed reparations and/or a refund from PacifiCorp for all such excess payments, in addition to a requirement from the Commission that PacifiCorp provide immediate disconnection under the terms of its Net Removal Tariff.

IV. JURISDICTION

5 The Commission has jurisdiction over this Complaint and the Parties pursuant to RCW Chapters 80.01, 80.04, and 80.28, including, specifically: RCW 80.01.040 (general powers and duties of the Commission), 80.04.110, 80.28.010, and 80.28.020. Under RCW 80.04.110, a complaint may be made setting forth any act or thing done or omitted to be done by a public service company, in violation (or claimed violation) of statute or any order or rule of the Commission. Under RCW 80.04.220 and 80.04.230, the Commission may, upon complaint of any party, order a public service company to refund any amounts, with interest, that it finds were excessive or charged in excess of the lawful rate, regardless of whether the excess amounts were

charged before or after the filing of the complaint.

6 Further, the United States District Court, Eastern District of Washington (the “**Court**”), granted PacifiCorp’s motion to dismiss a federal action based upon the same facts at issue in this complaint.^{1/} The Court found that the Commission has both primary and exclusive jurisdiction to determine the disconnection and removal issues herein.^{2/} Additionally, in regard to damage reparations and/or refunds which the Club presently seeks, the Court concluded “that the Commission appears to have ample statutory authority to afford meaningful relief.”^{3/}

V. STATEMENT OF FACTS

7 Under Rule 6, Section I(1) of the Company’s Net Removal Tariff, a customer is only required to pay for “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.” These Rule 6 terms were approved by the Commission in 2002, when the relevant Net Removal Tariff terms were originally adopted in Docket No. UE-001734, Eighth Supplemental Order ¶¶ 36, 95 (Nov. 27, 2002) (the “**Eighth Supplemental Order**”).

8 Since 1923, the Club has received and paid for electric service from PacifiCorp to energize its buildings, improvements and golf course irrigation system.^{4/}

9 In or around October 1987, the Club made certain improvements to its existing facilities, and granted an easement to PacifiCorp to "install, maintain repair, replace, rebuild, operate and patrol" an electric underground service line and the related appurtenances. In May 2000, the Club granted PacifiCorp a second easement to install additional underground electric service facilities.^{5/} Both easements were granted solely to provide underground electric service to the

^{1/} The Court Order is attached as Exhibit A.

^{2/} Id. at 9.

^{3/} Id. at 11.

^{4/} See Affidavit of Jeff Thomas as Exhibit B.

^{5/} Id. at p. 3, ln. 1.

Club.^{6/}

10 In the early summer of 2012, the Club contacted PacifiCorp to explore the possibility of
transferring its electrical services to another provider.

11 In July 2012, PacifiCorp notified the Club that it would charge the Club \$19,581 to
complete the requested disconnection.^{7/}

12 In December 2012, the Club formally notified PacifiCorp of its intent to disconnect its
electric services and obtain electric service from CREA.

13 The Club requested only that its service be disconnected; the Club never demanded
PacifiCorp to remove any property from the Club's site. Specifically, the Club never demanded
that PacifiCorp remove any of its underground conduits.^{8/} On December 11, 2012, the Club
tendered to PacifiCorp the \$19,581 that PacifiCorp had requested; however, PacifiCorp refused
and returned the Club's check, asserting that the prior price was only an estimate.^{9/}

14 On January 25, 2013, PacifiCorp advised the Club, via letter, that despite its prior cost
quote, no disconnection would be completed unless and until the Club paid \$104,176.00.^{10/} That
figure included two components: 1) \$66,718 for the removal of two separate runs of conduit,
along with the attendant electrical vaults; and 2) \$37,458 for the removal of wires, transformers
and metering equipment. PacifiCorp's January 25, 2013 letter went on to offer to sell the conduit
and vaults to the Club for the exact sum it had demanded to remove those facilities, namely
\$66,718. A Bill of Sale for the conduit was included. Id. PacifiCorp also asserted that "allowing
[the] facilities to remain in place would place other customers at an unfair advantage, which is

^{6/}

Id.

^{7/}

Id. at p. 4, ln. 12.

^{8/}

See Letter from Tom Baffney, Exhibit C.

^{9/}

Exhibit B, p. 5, ln. 10.

^{10/}

Letter from Mike Gavin, Exhibit D.

inconsistent with sound regulatory policy.”^{11/}

15 Upon information and belief, the conduits and vault have a salvage value below \$10,000. On May 3, 2013, and May 23, 2013, the Club offered to tender either replacement conduit and vaults or the sum reflecting the actual cost of similar new facilities.^{12/} PacifiCorp refused the offer and reiterated its offer to sell the vault and conduit.¹³

16 One of the runs of conduit (along with its attendant vault) was installed and paid for, in the first instance, by the Club.^{14/}

17 PacifiCorp's offer to sell the underground conduits and vaults demonstrates they may be left in place without posing any operational or safety issue.¹⁵

18 Despite the Club's demand to terminate service, PacifiCorp has not disconnected any facilities from the Club's property.

19 PacifiCorp's refusal to disconnect its facilities has prevented, and continues to prevent, the Club from switching its electrical service to CREA, resulting in the loss of approximately \$1,000 per month in savings that the Club would have been able to realize by transitioning its service to CREA.

VI. COMPLAINT

A. First Cause of Action -- Violation of RCW 80.28.010 – PacifiCorp's Actions Inconsistent with the Commission Order Approving Relevant Net Removal Tariff Terms Result in Unjust, Unreasonable and Unfair Charges and Services

20 RCW 80.28.010(1) provides that all electric company charges made or demanded for any service to be rendered must be fair, just, and reasonable. Likewise, sections (2) and (3), above,

^{11/} Letter from Michelle Mishow, Exhibit E, p. 2.

^{12/} See Letters from Tom Baffney, Exhibits F and G.

¹³ See Letter from Michelle Mishoe, Exhibit H.

^{14/} Exhibit B, p. 3, ln. 12.

¹⁵ Exhibit E, p. 2

require that electric companies must furnish services which are in all respects just and reasonable, and that any rules and regulations issued by such companies must also be just and reasonable.

21 The Commission, pursuant to its duties under RCW 80.01.040 to regulate PacifiCorp in accord with the public interest, issued the Eighth Supplemental Order in 2002, adopting Net Removal Tariff terms relevant to this complaint. In so doing, the Commission established fair, just, and reasonable charges which PacifiCorp may collect for service disconnections, in addition to specifying which disconnection services are just and reasonable for the Company to furnish. When a customer requests permanent disconnection from PacifiCorp facilities, the Commission only granted the Company authority to require “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.”¹⁶Consequently, any actions by the Company contrary to these Rule 6 terms is also a violation of the Commission’s Eighth Supplemental Order and RCW 80.28.010.

22 Given the facts stated herein, PacifiCorp has violated Rule 6 terms—and the Eighth Supplemental Order and statute, thereby. First, Rule 6 does not allow the Company to require facility removal when safety and operation reasons do not make removal necessary. The Club’s underground conduits and vaults can be left in place without posing any operational or safety issue—indeed, the Company conceded the fact by offering to sell the underground conduits and vaults to the Club. Likewise, PacifiCorp acknowledged that no safety or operational concerns required conduit or vault removal, asserting only that “allowing [the] facilities to remain in place would place other customers at an unfair advantage, which is inconsistent with sound regulatory policy.”

23 Further, the facts at issue establish that PacifiCorp has violated Rule 6 terms, the Eighth Supplemental Order, and statute by demanding charges for illegal and unnecessary removal of facilities. The Company's revised removal estimate of \$104,176, constitutes charges which are impermissible under Net Removal Tariff Rule 6.

24 A violation of RCW 80.28.010 necessitates that the Commission determine the just and reasonable charges and practices which PacifiCorp must observe, pursuant to RCW 80.28.020. Accordingly, the Commission should order the Company to immediately disconnect its facilities from Club property, further ordering that no removal costs are justified for the conduit and vaults because no safety or operations reasons require their removal.

B. Second Cause of Action – Violations under RCW 80.04.220 and .230 – Unreasonable and Excess Charges Justify Reparations and/or Refunds

25 Realigning and incorporating by reference each and every allegation set forth above, under RCW 80.04.220, the Commission has authority to order damages payments, with interest, to a customer for any excess service charges. Likewise, under RCW 80.04.230, the Commission has authority to order payment of overcharges, with interest, associated with services rendered in excess of lawful rates.

26 Despite the Club's request, PacifiCorp has yet to disconnect any of its facilities from the Club's property. No safety or operational reasons exist which require facility removal before disconnection is made. Notwithstanding, the Company has refused the Club's tender of payment for estimated removal costs, independent of whether facility removal is necessary in the first place. Consequently, the Club continues to be charged for unwanted PacifiCorp electric services and is unable to receive less expensive services from alternate service provider CREA.

¹⁶ Rule 6(I)(1) (Emphasis Added).

Under these circumstances, since December 2012 the Club has been forced to purchase electric power from PacifiCorp costing more than the same power could have been purchased from CREA. Whether styled as reparation damages under RCW 80.04.220, or overcharge refunds under RCW 80.04.230, the Commission should order PacifiCorp to render payment to the Club in the amount proven before the Commission, plus interest, for violations of Net Removal Tariff terms. To this same end, the Court considered the applicability of both RCW 80.04.220 and .230, finding that one or both of these sections provided “a process for a formal complaint concerning the reasonableness of *any* charge for *any* service performed,” and concluding that “that the commission appears to have ample statutory authority to afford meaningful relief.”^{17/}

VII. RELIEF REQUESTED

PacifiCorp has violated the terms of Net Removal Tariff Rule 6, and in so doing violated both Commission order and statute. The Company has unlawfully refused to disconnect its facilities from Club property, and demanded exorbitant charges for unnecessary facility removal far in excess of amounts approved under the Eighth Supplemental Order. Since December 2012 the Club has been unable to acquire less expensive electric service from CREA resulting in increased electricity charges of approximately \$1,000.00 per month. Accordingly, the Club respectfully requests that the Commission take the following actions:

- (1) Determine that PacifiCorp has violated Commission approved terms of its Net Removal Tariff;
- (2) Order the disconnection of utility service by PacifiCorp in accordance with Rule 6.I(1), to include leaving the conduits and vaults in place;
- (3) Require PacifiCorp to make damage reparations and/or refund overcharges to the

^{17/} Exhibit A at 11.

Club, plus interest; and


- (4) Such other relief as the Commission deems just and proper.

Respectfully submitted,


DATED this 18th day of November, 2014.

MINNICK-HAYNER

WITHERSPOON KELLEY



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