

1 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

2 **UM 1424**

RAINBOW YOUTH GOLF EDUCATION
PROGRAM, INC.

v.

PACIFIC POWER

Motion to Dismiss, Answer and
Affirmative Defenses of Pacific Power

3
4 PacifiCorp, d/b/a Pacific Power (“Pacific Power” or “the Company”), Defendant
5 in this proceeding, moves to dismiss the complaint of the Rainbow Youth Golf Education
6 Program, Inc. (“Complainant”)¹, pursuant to OAR 860-013-0031. In the alternative, the
7 Company answers the complaint, pursuant to OAR 860-13-025 and ORS 756.512.

8 **A. The Nature of the Case**

9 Complainant outlines concerns as three specific items and asks for relief from the
10 Public Utility Commission of Oregon (“Commission”). First, Complainant alleges the
11 Company delayed the installation of service to the DMOLO Golf Facility (“Site”).
12 Complainant alleges this may cause the need for replanting of grass for the Site and delay
13 the opening of the Site. Complainant seeks damages in the amount of \$6000 for “loss in
14 revenues.” Second, Complainant then asserts that the contract minimum billing costs
15 associated with providing service to the site are excessive. Complainant seeks to adjust
16 the monthly minimum billing to a period of three years with monthly payments of
17 \$105.55, and deletion of the 80 percent requirement. Finally, Complainant states that the
18 Company has treated Complainant unfairly and with prejudice. Complainant seeks a

¹ Pacific Power sometimes refers to communications with individual representatives of Complainant, William Ray, Sr. and William Ray, Jr.

1 donation of \$10,000² per year for three years to the Rainbow Youth Golf Education
2 Program.

3 **B. Motion to Dismiss**

4 The Company moves to dismiss this Complaint on the grounds that Complainant
5 failed to state grounds for which the Commission may grant relief. Complainant cites no
6 statute, administrative rules or other authority pertaining to the Company's service to the
7 Site for which the Company may be found in violation by the Commission, as required
8 by ORS 765.500 (1) and (3).

9 Item #1 alleges the Company's installation of service to the Site on October 14,
10 2008 *might* cause the opening of the facility to be moved from June 2009 to August 2009.
11 Complainant then seeks damages for potentially lost revenue based on the amount of
12 electricity that might have been used at the Site during September 8, 2009 and October
13 14, 2009. Complainant essentially seeks relief from the Commission for damages that
14 have not been incurred and may never be incurred. Such speculation fails to constitute
15 grounds for relief. Additionally, the awarding of economic damages resides outside of
16 the Commission's jurisdiction. ORS 756.990 authorizes the Commission to impose
17 penalties for violations of statutes administered by the Commission, Commission rules or
18 Commission orders. Nowhere in this statutory provision will one find the authority to
19 impose compensation for economic damages.

20 Item #2 alleges the monthly minimum amounts due for the Complainant's
21 services contract are excessive. Complainant alleges the contract is for the installation of
22 a three-phase line, including current transformer ("CT") devices, pole and meter base,

² The complaint requests that PP&L provide a donation of \$10,000. PP&L assumes this is a typographical error.

1 and maintenance. Complainant alleges the contract monthly minimum would be in
2 addition to the cost of electricity. This appears to be a misunderstanding of how contract
3 monthly minimums are calculated. The Company provides services like those requested
4 by Complainant pursuant to its Oregon Rule 13, Line Extensions (“Rule 13”). Under
5 Rule 13, the Company will construct facilities for a customer and charge the customer for
6 the cost of the service installation, subtracting an allowance. In order to ensure the
7 Company’s costs are recovered for the service installation, the Company bills the
8 customer a minimum amount each month, which is reduced if the customer uses a certain
9 amount of electricity each month.

10 The Company’s services contract with Complainant, included as Attachment A, is
11 the standard contract. The Company calculated Complainant’s monthly minimum in
12 accordance with Rule 13 and is consistent with statutory pricing principles. Complainant
13 seeks to alter the terms of the contract to contain non-standard pricing terms, which
14 would violate ORS 757.310(1) and Rule 13. ORS 757.310(1) prohibits a utility from
15 charging rates different from those contained in its tariffs. The services contract cannot
16 be altered in the manner requested by Complainant and remain consistent with ORS
17 757.310(1).

18 Additionally, amending the services contract as Complainant suggests would lead
19 to the Company charging Complainant differently than its other customers. ORS
20 757.310(2) prohibits a utility from charging a customer an amount for a service that is
21 different from that charged to other customers for the same service. Amending the
22 services contract as suggested by Complainant would lead to a violation of ORS
23 757.310(2).

1 Finally, Complainant offers no analysis or substantiation for the monetary
2 amounts to include in the services contract, or whether the amounts relate to the
3 Company's costs for constructing the service installation for Complainant. Complainant
4 seeks relief for Item #2 that is contrary to statute and Commission-approved tariff, and
5 lacks a relationship to the Company's costs for the service installation. Complainant
6 seeks what appears to be an equitable remedy such as reformation or rescission of the
7 contract available under contract law, which falls outside of the Commission's purview.

8 Item #3 alleges the Company treated Complainant inequitably and with prejudice.
9 The Company takes this allegation very seriously and strongly disagrees with
10 Complainant's assertions. Complainant seeks courteous and respectful treatment, and a
11 \$10,000 donation to the Rainbow Youth Golf Education Program each year for three
12 years. The Company and its employees strive to build and maintain strong customer and
13 community relationships and do not discriminate against any of its customers. While the
14 Company understands and is sensitive to the gravity of the allegations contained in Item
15 #3, Complainant offers nothing for which relief may be granted from the Commission.
16 ORS 756.990 authorizes the Commission to impose penalties for violations of statutes
17 administered by the Commission, Commission rules or Commission orders. Nowhere in
18 this statutory provision will one find the authority to require relief such as that sought by
19 the Complainant.

20 For these reasons, this Complaint must be dismissed.

21 **C. Answer to Complaint**

22 In the alternative, if the Commission determines that dismissal of this Complaint
23 is not appropriate at this time, the Company answers the Complaint and states as follows:

1 **1. Item # 1**

2 Complainant's first item of contention is the timeframe for installing service at the
3 Site in Chiloquin, Oregon. Complainant argues that the Rainbow Youth Golf Education
4 Program needed service by September 1, 2008 and that the Company should have
5 temporarily connected service immediately after the Company received the signed
6 contract and advance. Complainant asks for \$6,000.00 in estimated lost revenue for six
7 weeks of downtime that has not yet occurred and might not occur.

8 The Company denies delaying providing service to the Site. Through a series of
9 communications over the course of approximately 13 months, Pacific Power provided
10 Complainant with the necessary information and cost involved with providing service to
11 the Site for at least two potential service options. Additionally, the Company answered
12 Complainant's questions and responded to changes in the requested service in a timely
13 manner. Further, receiving a signed contract and advance from a customer is but one step
14 in the process for service installations. This particular step generally signals to the
15 Company that necessary parts and equipment must be ordered. Installation depends upon
16 availability of equipment and labor, among other things.

17 Pacific Power's records show many communications with William Ray, Sr.
18 during the initial phases of this project and later with both William Ray, Sr. and William
19 Ray, Jr. regarding service to the Site. On September 28, 2007, William Ray, Sr.
20 contacted Pacific Power requesting a ballpark estimate to bring service to the Site.
21 Pacific Power met with William Ray, Sr. at the Site on October 9, 2007. William Ray,
22 Sr. provided preliminary load information to the Company so that an estimator could
23 prepare the first design for service to the Site. The Company provided a ballpark

1 estimate to William Ray, Sr. on November 5, 2007 for \$10,187.00 with an annual
2 facilities charge of \$4,578.00.

3 No further communication was received until the week of April 14, 2008, more
4 than five months after the Company provided an estimate for service, when William Ray,
5 Sr. called to request an estimate to bring service to the Site. An estimator met with
6 William Ray Sr. at the site on April 23, 2008, to discuss the service request, including
7 possible vault locations and conduit routes. At this meeting, William Ray, Sr. did not
8 specify that the Complainant was prepared to proceed with the job or that they were
9 ready to obtain a firm estimate to bring service to the Site. Pacific Power had
10 communicated only “ballpark” estimates to install service, as no complete and final load
11 information was available up to this point.

12 The Company did not hear from the Complainant again directly regarding this
13 job³ until May 27, 2008, when William Ray Sr. contacted Pacific Power requesting
14 permission to backfill the trench over the installed conduit and vaults placed by
15 Complainant. A Pacific Power estimator visited the site the following day, May 28,
16 2009, and approved the backfill and received verbal load information to complete the
17 estimate. After this site visit, in anticipation of the required material needed for the job,
18 Pacific Power pre-ordered a 277/480 volt, three-phase transformer, which was scheduled
19 to arrive August 28, 2008. The Company also began conducting the necessary steps for
20 preparing easements for service to the Site. The Company generally waits to order
21 materials until it receives a signed contract from a customer so as not to incur
22 unnecessary expenses. However, in this instance, the Company believed the risk of a

³ William Ray Jr. contacted the Oregon Public Utility Commission on May 13, 2008 requesting general information on property owner rights.

1 change in plans to be low given the trenching, and conduit and vault installation
2 conducted by the customer.

3 On June 13, 2008, Pacific Power mailed the services contract, which contained
4 the estimate to provide service and the necessary easements. The estimated total job cost
5 was \$27,844.00. The customer was given an allowance of \$12,899.00 based on the
6 Complainant's load information. After receiving a \$250 administrative credit, the
7 Complainant's advance was \$14,695.00, with the monthly minimum facility charges of
8 \$315.15. William Ray, Sr. contacted the estimator on July 7, 2008 and requested a
9 meeting the following day.

10 On July 8, 2008, Pacific Power met with William Ray Sr., William Ray Jr. and
11 Karen Ray to discuss their concerns with the services contract and easement language in
12 the documents mailed on June 13, 2008. Prior to this meeting, all communications with
13 Complainant had been with William Ray Sr. Pacific Power was unaware of any
14 problems or concerns that Complainant had with the Company or the original design to
15 install service to Complainant's Site.

16 William Ray, Jr. began the July 8, 2008 meeting by sharing his dissatisfaction
17 with Pacific Power. William Ray, Jr. then proposed amendments to the services contract
18 and the easements. For the services contract, William Ray, Jr. proposed deleting a
19 provision related to trial by jury in the event of a dispute and a provision regarding
20 providing annual income statements. For the easements, William Ray, Jr. proposed
21 language to allow essentially unrestricted access to the easements, among other things,
22 for the purpose of constructing, reconstructing, maintaining and repairing underground
23 irrigation and computer systems; and turf and vegetation management. Complainant was

1 advised that Pacific Power's legal and right of way departments would review the
2 proposed changes.

3 On July 14, 2008, Pacific Power contacted William Ray, Jr. and explained that the
4 changes to the standard services contract were accepted but Pacific Power could not
5 accept the proposed changes to the easement documents. Allowing unrestricted access to
6 the easement, particularly for the purpose of working on underground equipment, is
7 extremely risky with underground electric facilities in the area and exposes the customer
8 to potential bodily harm and the Company to liability should contact be made with the
9 electric facilities. Pacific Power again supplied its standard easement to William Ray, Jr.,
10 who faxed Pacific Power on July 15, 2008 again requesting changes to the easement
11 documents similar to those proposed after the July 8, 2009 meeting.

12 On July 22, 2008, Pacific Power contacted William Ray, Jr. requesting a signed
13 copy of the services contract, indicating that Complainant can put together specific plans
14 for easement area and submit Conditional License Agreement to encroach in the area.
15 Such Conditional License Agreement would allow Complainant to use the easement in
16 ways consistent with the use for which the easement is granted, thus protecting both the
17 customer and the Company. On July 28, 2008, William Ray, Jr. spoke with Pacific
18 Power's right of way department, which again explained that Complainant could use the
19 easement in a manner consistent with the purpose of the easement and offered the
20 possibility of using a Conditional License Agreement. Complainant declined to provide
21 the necessary easement and advised that Complainant would prefer to have primary
22 metering at the Site. Pacific Power was unable to obtain a refund for the pre-ordered
23 transformer and absorbed it into local stock at cost of \$7,359.94. The Company had the

1 materials in stock and ready to install service to the Site by September 1, 2008, as
2 originally designed.

3 On July 29, 2008, William Ray, Jr. requested the removal of Pacific Power's
4 overhead facilities from the property. Pacific Power visited the site on August 5, 2008 to
5 provide an invoice of \$3,995.00 for the existing pad mount transformer and the labor to
6 remove all of the overhead conductors, poles and associated hardware. William Ray, Sr.
7 requested that he be allowed to remove the overhead equipment to save on labor costs.
8 Pacific Power's estimator advised that he would inquire as to whether the Company
9 could allow William Ray, Sr. to do the removal. The estimator prepared a second design
10 for the service to the Site, expending further resources. On August 18, 2008, Pacific
11 Power estimator completed the primary metering job design and forwarded it to
12 engineering for review. After making changes suggested by engineering and gaining
13 manager approval, Pacific Power mailed the primary metering contract to the customer
14 on August 26, 2008. The estimated total cost for the job was \$13,616.00. The customer
15 was given an allowance of \$11,932.00 based on the load information provided. After
16 receiving a \$250 administrative credit, the Complainant's advance was \$1,434.00 with
17 the monthly minimum facility charges of \$210.55.

18 Additionally, the Company agreed to allow Complainant to purchase the overhead
19 facilities. On August 26, 2008, Pacific Power's estimating department revised the
20 removal job to allow the customer to purchase idle overhead facilities and allow William
21 Ray, Sr. to remove it himself. The Company calculated the sales price for the facilities to
22 be \$1,389.00 for Company to de-energize the line and remove the overhead transformer,
23 plus the salvage value of the transformer and aluminum wire. The Company included the

1 salvage amount in the sales invoice for the transformer and aluminum wire because there
2 is salvage value associated with those items. The Company mailed the \$1,389.00 invoice
3 to the Complainant on August 28, 2008.

4 On September 5, 2008, Pacific Power received the signed services contract and
5 check for the customer advance of \$1,434.00. The job was forwarded to warehouse and
6 metering department on September 8, 2008. The Company ordered materials on
7 September 9, 2008, with an anticipated delivery date of October 9, 2008. These materials
8 generally take four to six weeks to arrive. Given that the customer changed his mind on
9 the first service design, the Company waited for the signed contract before ordering
10 materials because the Company did not want to incur the expenses without greater
11 assurances that the materials would be used as agreed upon by the customer. Pacific
12 Power's distribution manager contacted William Ray, Jr. to advise of delivery date for
13 CT metering equipment and committed to energizing service as soon as material arrives.

14 On October 9, 2008, when material had not been received, Pacific Power's
15 distribution manager authorized the connection of service for the Complainant in efforts
16 to appease the customer. On October 14, 2008, the Company energized service to the
17 Site without metering, allowing Complainant to use service without being billed. During
18 this site visit, Pacific Power crews provided assistance on their lunch hour to William
19 Ray, Sr. with troubleshooting the Site's electric facilities. The CT material arrived on
20 October 17, 2008, within the four to six week time frame for delivery. The Company
21 completed installation by October 21, 2008.

22 On December 1, 2008, the Company removed remainder of the facilities from
23 previous service not sold to the Complainant. During this visit, Pacific Power crews

1 again provided assistance on their lunch hour to William Ray, Sr., helping splice
2 Complainant's electric facilities. On December 3, 2008, the Company removed from the
3 Site a meter from the previous service, glassing over the meter base and installing a lock
4 ring at no cost to the Complainant. Pacific Power did not hear anything further from
5 Complainant until receiving notice from the Commission of the filing of this Complaint.

6 **2. Item # 2**

7 Complainant's second item argues that the contract minimum billing charge is
8 excessive and difficult to understand. The contract minimum billing is described in the
9 General Service Contract, Item 4, signed by Complainant and submitted to the Company
10 on September 5, 2008. See Attachment A.

11 The Company denies the contract monthly minimum billing charge is excessive
12 and difficult to understand. Pacific Power developed the costs for the primary metering
13 to the Site using costs included in Federal Energy Regulatory Commission accounts,
14 which is the same method the Company uses for calculating costs for all service
15 installations. The total estimated cost, including labor and material, to provide primary
16 metered service to Complainant was \$13,616.00. Complainant received an allowance of
17 \$11,932.00 based on the load information provided. Additionally, Complainant received
18 a \$250.00 administrative credit towards the amount due, leaving an advance of \$1,434.00
19 and a contract monthly minimum billing of \$210.55.

20 Pacific Power required Complainant to pay a contract monthly minimum billing
21 in accordance with Rule 13, I. Line Extensions- Conditions and Definitions, B. Contract
22 Minimum Billing. Pacific Power calculated Complainant's contract monthly minimum
23 billing using Pacific Power Rate Schedule 300.

1 Complainant would not be required to pay \$12,633 in addition to electric use at
2 the Site. Under the services agreement, the Complainant is obligated to pay the electric
3 service revenue plus the facilities charge, less a credit of up to 20 percent of their electric
4 service revenue. This means the Complainant's facilities charges are reduced based on
5 their usage, to the point that if their electric service revenue is five times the contract
6 minimum billing the Complainant will only pay for the electric service revenue and pay
7 nothing towards a facilities charge.

8 For example, Complainants recent electric bill was \$99.49. Eighty percent (80%)
9 of that usage, \$79.59, added to the facilities charge of \$210.55, produces a total of
10 \$290.14. Because the Complainant's recent electric usage was \$99.49, \$190.65 is
11 required towards the contract to equal \$290.14. Therefore, Complainant paid less than
12 \$210.55 for the contract charges.

13 **3. Item # 3**

14 Complainant's third item alleges that Pacific Power treated Complainant and
15 individuals associated with the Site inequitably and prejudicially. Complainant claims
16 that Pacific Power demonstrated an unwillingness to resolve Complainant concerns
17 during the process of bringing service to the Site.

18 Pacific Power denies Complainant's assertion that they were treated inequitably
19 or prejudicially. As shown in the timeline in Item #1, Pacific Power provided an estimate
20 to William Ray, Sr. for the first requested estimate in a timely manner. The Company
21 then did not hear anything about service to the Site for approximately five months when
22 an estimator met with William Ray, Sr. at the Site to discuss service. Approximately one
23 month later, William Ray, Sr. requested approval of underground work, which the

1 Company's estimator did the following day. The estimator also pre-ordered equipment
2 based on his belief that it would be used for the Site. Approximately two weeks later, the
3 Company delivered the services contract and easements to Complainant for review and
4 signature. The Company met with Complainant at the Rays' home to discuss the
5 documents. Complainant proposed changes to the documents. The Company accepted
6 the changes to the services agreement because those changes were not inconsistent with
7 the Company's tariffs or other applicable law.

8 The Company did not accept the proposed changes to the easements because
9 Complainant essentially sought unrestricted access to the easement area, largely for the
10 safety reasons. Complainant sought unrestricted access to the easement area for
11 underground irrigation and computer equipment, among other things. The Company's
12 facilities and equipment in the easement were also underground. With unrestricted
13 access to the easement, particularly for the purpose of conducting work on underground
14 irrigation and computer systems, Complainant could come into contact with the
15 Company's energized facilities, thus risking serious bodily harm. The Company
16 attempted to compromise on the easement language by offering a Conditional License
17 Agreement to detail the specifics of Complainant's use of the easement. Complainant did
18 not accept this compromise and chose a different type of service, primary metering.

19 The Company then began the process of providing primary metering service to
20 Complainant. This included re-designing the service, preparing a new estimate and a
21 new services contract. Additionally, Complainant requested to be able to perform some
22 of the work. Pacific Power was able to accommodate this request. This required the
23 Company to prepare legal documents to sell some of its equipment to Complainant.

1 Pacific Power waited until it received a signed contract from Complainant to
2 order materials and equipment for the re-design to lower the risk of incurring additional
3 expenses if Complainant again altered plans for service to the Site. After receiving the
4 signed services contract, the Company promptly ordered the necessary materials and
5 equipment. Although the equipment did not arrive on the anticipated arrival date, the
6 Company made arrangements to install temporary service to the Site until the necessary
7 equipment arrived. When the equipment arrived, within the anticipated time range, the
8 Company promptly completed the installation.

9 While working on Company facilities at the site, Pacific Power crews twice,
10 during their lunch hour assisted Complainant with troubleshooting issues on
11 Complainant's side of the meter.

12 Finally, regarding the allegations of invalid meter reading, Pacific Power
13 estimated meter reads to the Site on November 20, 2008, December 23, 2008 and January
14 23, 2009. The Company was unable to obtain actual meter reads for those dates because
15 Complainant did not provide a plowed or maintained access route to the meter. The
16 November 20, 2008 read was not obtained as the meter reader was not sure of its
17 location. The following months, Pacific Power meter readers reported that the path to the
18 meter was unsafe, being slippery and muddy. The Company routinely instructs its meter
19 readers not to attempt a meter read in those situations for safety reasons. OAR 860-021-
20 0120(3)(a) allows the Company to estimate meter reads when access to the meter is
21 difficult.

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1 **D. AFFIRMATIVE DEFENSES**

2 1.

3 Pacific Power provided service to Complainant in a reasonable amount of time.
4 Pacific Power followed its standard procedures in processing Complainant’s service
5 request and worked with Complainant to accommodate non-standard requests where
6 possible. Complainant failed to demonstrate that Pacific Power’s responses to their
7 multiple requests were inconsistent with the application of the Company’s line extension
8 rules, property law, the Company’s electric service requirements and other applicable law
9 when providing electric service.

10 2.

11 Service to the Complainant was scheduled and would have been available prior to
12 September 1, 2008 had the Complainant provided the necessary easements. The
13 easements were standard easements that would have allowed Complainant use of the
14 easements so long as the use was consistent with the purpose of the easements.
15 Additionally, the Company offered a Conditional License Agreement in an attempt to
16 accommodate Complainant’s concerns regarding underground computer and irrigation
17 equipment. Complainant chose not to provide the easement necessary to provide service
18 as required in the first designed job. Instead, Complainant requested a different type of
19 service. Complainant’s request for primary metering required a new job design, new
20 estimate and additional material. Pacific Power ordered the appropriate materials
21 necessary to complete the request for primary metering once Complainant signed the
22 services contract and paid the necessary advance.

1 3.

2 Pacific Power required the Complainant sign a contract in accordance with Pacific
3 Power's Oregon Rule 13, Section I., A. and pay a contract minimum billing as per
4 Pacific Power's Rule 13, Section I., B. The facilities charges in the contract minimum
5 billing are calculated as specified in Oregon Schedule 300. Complainant seeks to alter
6 the terms of the contract to contain non-standard pricing terms, which would violate ORS
7 757.310(1) and Rule 13. ORS 757.310(1) prohibits a utility from charging rates different
8 from those contained in its tariffs. The services contract cannot be altered in the manner
9 requested by Complainant and remain consistent with ORS 757.310(1).

10 Additionally, amending the services contract as Complainant suggests would lead
11 to the Company charging Complainant differently than its other customers. ORS
12 757.310(2) prohibits a utility from charging a customer an amount for a service that is
13 different from that charged to other customers for the same service. Amending the
14 services contract as suggested by Complainant would lead to a violation of ORS
15 757.310(2).

16 Finally, Complainant offers no analysis or substantiation for the monetary
17 amounts to include in the services contract, or whether the amounts relate to the
18 Company's costs for constructing the services for Complainant. Complainant seeks relief
19 for Item #2 that is contrary to statute and Commission-approved tariff, and lacks a
20 relationship to the Company's costs for installing service to the Site.

21 4.

22 Any property rights disputes reside outside of the Commission's jurisdiction.
23

1 5.

2 Any claim for damages reside outside of the Commission' jurisdiction.
3 Complainant essentially seeks relief from the Commission for damages that have not
4 been incurred and may never be incurred. Such speculation fails to constitute grounds for
5 relief. Additionally, the awarding of economic damages resides outside of the
6 Commission's jurisdiction. ORS 756.990 authorizes the Commission to impose penalties
7 for violations of statutes administered by the Commission, Commission rules or
8 Commission orders. Nowhere in this statutory provision will one find the authority to
9 impose compensation for economic damages.

10 Additionally, Complainant seeks courteous and respectful treatment, and a
11 \$10,000 donation to the Rainbow Youth Golf Education Program each year for three
12 years. The Company and its employees strive to build and maintain strong customer and
13 community relationships. The Company does not discriminate against any of its
14 customers. While the Company understands and is sensitive to the gravity of the
15 allegations contained in Item #3, Complainant offers nothing for which relief may be
16 granted from the Commission. ORS 756.990 authorizes the Commission to impose
17 penalties for violations of statutes administered by the Commission, Commission rules or
18 Commission orders. Nowhere in this statutory provision will one find the authority to
19 require relief such as that sought by the Complainant.

20 6.

21 Complainant has failed to allege sufficient facts to constitute a claim upon which
22 relief can be granted.

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7.

Complainant has failed to cite applicable statutes, rules, Commission orders or Company tariffs alleged to have been violated.

WHEREFORE having fully answered Complainant's Complaint, Pacific Power prays for the dismissal of the Complaint with prejudice.

Dated this 2nd day of April 2009.
Respectfully submitted,

By 
Barbara A Coughlin
Director, Customer & Regulatory Liaison
PacifiCorp
825 NE Multnomah, Suite 800
Portland, OR 97232
Tel. (503) 331-4306 Fax. (503) 331-4442



Michelle Mishoe, # 07242
Legal Counsel
Pacific Power
825 NE Multnomah, Suite 1800
Portland, OR 97232
Tel. (503) 813-5977
Fax. (503) 813-7252

Cc: William E. Ray Jr.
36563 Agency Lake Loop
Chiloquin, OR 97624-7725

PACIFIC POWER ATTACHMENT A
UM 1424

(OR 12/05)
Service ID # 479855215
C/C: 11176
Page 1 of 5

Bob Hinkel, Estimator
Contract # 658875144
Request # 005092884

PACIFIC POWER & LIGHT COMPANY
GENERAL SERVICE CONTRACT
(1000 KW OR LESS)

This Contract, dated August 21, 2008, is between PACIFICORP, dba Pacific Power & Light Company (the "Company") and The Rainbow Youth Golf Education Program, INC., dba DMOLO Golf Facility ("Customer") for electric service for Customer's Golf Facility operation at or near 36563 Agency Lake Loop, Chiloquin, Oregon.

The Company's filed tariffs (the "Electric Service Schedules") and the rules (the "Electric Service Regulations") of the Oregon Public Service Commission, as they may be amended from time to time, regulate this Contract and are incorporated in this Contract. In the event of any conflict between this Contract and the Electric Service Schedules or the Electric Service Regulations, such schedule and rules shall control. They are available for review at Customer's request.

- 1. Delivery of Power.** Company will provide 12,000/6,928 volt, Three-phase primary electric service to the Customer facilities.
- 2. Contract Demand.** The specified Demand in kW that Customer requires to meet its load requirement and Company agrees to supply and have available for delivery to Customer, which shall be 120 kW (diversified, based on Customer's submitted load prior to the signing of this Agreement) unless otherwise agreed in writing in accordance with the terms of this Agreement. Within fifteen (15) days of the written request for additional demand, Company shall advise Customer in writing whether the additional power and energy is or can be made available and the conditions on which it can be made available.
- 3. Extension Costs.** The Company has agreed to fund a portion of the cost of the improvements (the "Improvements") related to the extension (the "Extension Allowance") as per tariff, and Customer agrees to pay all construction costs in excess of the Extension Allowance ("Customer Paid Costs"), in accordance with the selected option below. (Initial selected option on the blank space at the beginning of the option and pay the advance given in that option.)

_____ **Refund Option.** The Customer Paid Costs are **\$1,684.00**, and Customer remains eligible for \$ 1263.00 in refunds. Company will refund part of the Customer Paid Costs if additional customers connect to the Improvements within sixty (60) months of the date the Company is ready to supply service. Company will refund 25% of the refundable Customer Paid Costs allocable to the **shared** Improvements for each of the first three additional customers. The Company will try to inform Customer when a refund is due; **however, Customer is responsible for requesting a refund.**

✓ _____ **Contract Administration Credit Option.** Customer chooses to receive a Contract Administration Credit of **\$250** and **waives Customers' right to refunds should additional customers connect to this Improvements.** Accordingly, Customer's net Customer Paid Costs are **\$1,434.00.**

**PACIFIC POWER ATTACHMENT A
UM 1424**

(OR 12/05)
Service ID # 479855215
C/C: 11176
Page 2 of 5

Bob Hinkel, Estimator
Contract # _____
Request # 005092884

4. Contract Minimum Billing. Customer agrees to pay a Contract Minimum Billing during the first 60 months beginning from the date the Company is ready to supply service. The billing shall be the greater of: (1) the monthly schedule billing; or, (2) \$210.55 plus eighty percent (80%) of the monthly schedule billings. Billings will be based on Rate Schedule No. 28 and superseding schedules. The Company will adjust the minimum charges if additional customers connect to the Improvements

5. Term. This Contract becomes effective when both the Company and Customer have signed it, and will remain in effect for five (5) years following the date when the Company is ready to supply service.

In the event Customer terminates service or defaults (which results in termination of service) within the first five (5) years of this Contract, Customer shall be responsible for paying the remaining Contract Minimum Billing for the remainder of the five-year term.

6. Payments. All bills shall be paid by the date specified on the bill, and late charges shall be imposed upon any delinquent amounts. PacifiCorp reserves the right to require customer payments be sent by EDI or wire transfer. If Customer disputes any portion of Customer's bill, Customer shall pay the total bill and shall designate the disputed portion. PacifiCorp shall decide the dispute within sixty (60) days after Customer's notice of dispute. Any refund PacifiCorp determines Customer is due shall bear interest at the rate then specified by the Commission or, if no rate is specified, the then effective prime rate as established by the Morgan Guaranty Trust Bank of New York.

The Company may request deposits from Customer to the extent permitted under the applicable Electric Service Regulations and the applicable Electric Service Schedule. In the event of a default by Customer in any of its obligations, the Company may exercise any or all of its rights and remedies with respect to any such deposits.

7. Customer Obligations. Customer agrees to:

- a) Provide legal rights-of-way to Company, at no cost to the Company, using Company's standard forms. This includes rights-of-way on Customer's property and/or adjoining property and any permits, fees, etc. required to cross public lands, and
- b) Prepare the route to Company's specifications, and
- c) Comply with all of Company's tariffs, procedures, specifications and requirements.

**PACIFIC POWER ATTACHMENT A
UM 1424**

(OR 12/05)
Service ID # 479855215
C/C: 11176
Page 3 of 5

Bob Hinkel, Estimator
Contract # _____
Request # 005092884

8. **Effective.** This Contract will expire unless you:
- a) Sign and return an original of this Contract along with any required payment to Company within 90 days of the Contract date shown on page 1 of the Contract, AND
 - b) Are ready to receive service within 150 days of the above Contract date.
9. **Special Provisions:** If the provisions of #8 are not satisfied, the work order will be recalculated and a new contract and additional payment will be required
10. **Furnishing Information.** Not Applicable to this contract.
11. **Design, Construction, Ownership and Operation.** The Company shall design, construct, install, and operate the Improvements in accordance with the Company's standards. The Company will own the Improvements, together with the Company's existing electric utility facilities that serve or will serve Customer. Construction of the Improvements shall not begin until (1) both the Company and Customer have executed (signed) this Contract, and (2) all other requirements prior to construction have been fulfilled, such as permits, payments received, inspection, etc. Any delays by the Customer concerning site preparation and right-of-way acquisition or trenching, inspection, permits, etc. may correspondingly delay completion of the Improvements.

The Company warrants that its work in constructing and maintaining the Improvements shall be consistent with prudent utility practices. **THE COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** The Company's liability for any action arising out of its activities relating to the Improvements or the Company's electric utility facilities shall be limited to repair or replacement of any non-operating or defective portion of the Improvements or the Company's other electric utility facilities. Under no circumstances shall the Company be liable for other economic losses, including but not limited to consequential damages. The Company shall not be subject to any liability or damages for inability to provide service to the extent that such failure shall be due to causes beyond the reasonable control of either the Company or Customer.

No other party, including Customer, shall have the right to operate or maintain the Company's electric utility facilities or the Improvements. Customer shall not have physical access to the Company's electric utility facilities or the Improvements and shall engage in no activities on or related to the Company's electric utility facilities or the Improvements.

**PACIFIC POWER ATTACHMENT A
UM 1424**

(OR 12/05)
Service ID # 479855215
C/C: 11176
Page 4 of 5

Bob Hinkel, Estimator
Contract # _____
Request # 005092884

12. **Governing Law; Venue.** All provisions of this Contract and the rights and obligations of the parties hereto shall in all cases be governed by and construed in accordance with the laws of the State of Oregon applicable to contracts executed in and to be wholly performed in Oregon by persons domiciled in the State of Oregon. Each party hereto agrees that any suit, action or proceeding in connection with this Contract may only be brought before the Oregon Public Service Commission, the Federal courts located within the State of Oregon, or state courts of the State of Oregon, and each party hereby consents to the exclusive jurisdiction of such forums (and of the appellate courts therefrom) in any such suit, action or proceeding.
13. **Assignment.** The obligations under this Contract are obligations at all times of Customer, and may not be assigned without the Company's consent except in connection with a sale, assignment, lease or transfer of Customer's interest in Customer's facility. Any such assignment also shall be subject to (i) such successor's qualification as a customer under the Company's policies and the Electric Service Regulations, the applicable Electric Service Schedule, and (ii) until such successor is bound by this Contract and assume the obligation of Customer from the date of assignment, which may be evidenced by written agreement of such successor or other means acceptable to the Company. The Company may condition this assignment by the posting by the successor of a deposit as permitted under the applicable Electric Service Regulations and the applicable Electric Service Schedule.
14. **Remedies; Waiver.** Either party may exercise any or all of its rights and remedies under this Contract, the applicable Electric Service Regulations, the applicable Electric Service Schedule and under any applicable laws, rules and regulations. No provision of this Contract, the Electric Service Regulations, or the applicable Electric Service Schedule shall be deemed to have been waived unless such waiver is expressly stated in writing and signed by the waiving party.
15. **Attorneys' Fees.** If any suit or action arising out of or related to this Contract brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including, without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.
16. **Waiver of Jury Trial.** Not Applicable to this contract.

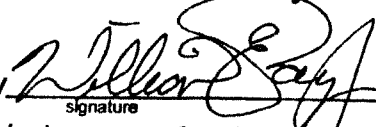
PACIFIC POWER ATTACHMENT A
UM 1424

(OR 12/05)
Service ID # 479855215
C/C: 11176
Page 5 of 5

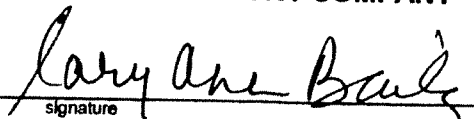
Bob Hinkel, Estimator
Contract # _____
Request # 005092884

17. **Entire Agreement.** This Contract contains the entire agreement of the parties with respect to the subject matter, and replaces and supersedes in their entirety all prior agreements between the parties related to the same subject matter. **This Contract may be modified only by a subsequent written amendment or agreement executed by both parties.**

The Rainbow Youth Golf
Education Program, INC.
dba DMOLO Golf Facility

By 
signature
William E. Ray, Jr. Executive Director
NAME (type or print legibly) TITLE
9-1-08
DATE

PACIFIC POWER & LIGHT COMPANY

By 
signature
Cary Ann Bailey Manager
NAME (type or print legibly) TITLE
9/8/08
DATE

Mailing Address for Executed Contract-

1950 Mallard Lane
Address

Klamath Falls, OR. 97601
City, State, Zip

CERTIFICATE OF SERVICE

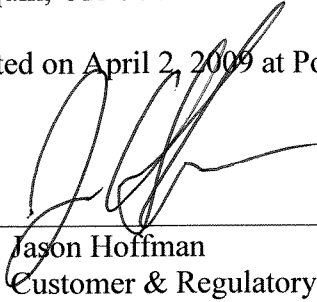
I hereby certify that I have this day served a copy of the Motion to Dismiss, Answer and Affirmative Defense on all known parties to Case No. UM 1424 by mailing a properly addressed copy by first-class with postage prepaid to each party named in the official service list.

Oregon Public Utility Commission
550 Capitol Street, N.E., Suite 215
Salem, OR 97301-2551

William E Ray
36563 Agency Loop Rd
Chiloquin, OR 97624

Executed on April 2, 2009 at Portland, Oregon.

By _____



Jason Hoffman
Customer & Regulatory Liaison