

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1424

RAINBOW YOUTH GOLF EDUCATION
PROGRAM INC.,

Complaint,

vs.

PACIFICORP, dba PACIFIC POWER

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Public Utility Commission of Oregon
Administrative Hearings Division

BRIEF

I. FACTS IN THE CASE

On March 13, 2009, Rainbow Youth Golf Education Program, Inc. (RYGEP) filed a consumer complaint against PacifiCorp, dba Pacific Power (Pacific Power or the Company), raising various issues related to Pacific Power's provision of electric service to RYGEP. In its complaint RYGEP complains that Pacific Power contract minimum billing formula included in its contract was unreasonable and should be changed. This contract minimum includes charges cost of owning and maintaining the equipment built to serve RYGEP.

II. ISSUES IN THE CASE

1. Are the costs reasonable by Pacific Power considering their estimate cost of \$13,616.00 and actual installation cost of \$22,250.95;
2. Are all elements of the Contract Minimum Billing calculation derived exclusively from Pacific Power's tariffs, approved by the Oregon PUC?
3. The inconsistency lies according to Pacific Power's Rule 13; a Contract Minimum Billing charge is calculated as 80 percent of the Consumer's monthly bill for electric service plus a "Facilities Charge." Pacific Power's Schedule 300 states that a Facilities Charge is either 0.67 percent of "installed cost" per month for facilities installed at the consumer's expense, or 1.67 percent of "installed cost" per month for facilities installed at the Company's expense.
4. Are the "installed cost" of the facilities mandated by tariff?
5. Pacific Power own admission that installed costs of the facilities are the same as the Company's construction estimate, which this estimate was established through Pacific Power's own internal procedures, rather than mandated by tariff.
6. Does the record support the conclusion that the installed cost of the facilities is reasonable and supported by law?
7. How credible and reasonable is Pacific Power's own internal procedure the Retail Construction Management System?
8. Has Pacific Power's Retail Construction Management System been reviewed by Oregon PUC Utility experts for fairness or been audited for accuracy?
9. Is it reasonable, fair or equitable for Pacific Power to estimate a line extension cost, then have the actual construction cost be higher than the estimate, then pass these cost/deficits onto the Oregon rate payers?

III. DECISIONS OF THE COURT

The Court recognized that Pacific Power as a electric utility is required to charge customers in accordance with their Commission-filed tariffs and for that reason, Pacific Power

must collect from RYGEP the amounts specific in its rate schedules, no more, and no less. Failure to do so would violate the law. Any charges required by tariff may not be changed here.

However, the Court disagreed with Pacific Power by stating "While Pacific Power provided a number of details about cost in its motion to dismiss, and provided a detailed description of its estimating process during the September 1 prehearing conference, it appears that one element of the Contract Minimum Billing calculation is not derived exclusively from Pacific Power's tariffs.....The "installed cost" of the facilities is not mandated by tariff. It appears that the installed cost of the facilities in this case is the same as Pacific Power's construction estimate, an estimate established through Pacific Power's own internal procedures, rather mandated tariff."

The Court further stated that "As a result, the record does not support a conclusion that the installed cost of the facilities in this case is reasonable as a matter of law."

IV. REASONING OF THE COURT

The Court noted that Pacific Power as an electric utility are required to charge customers in accordance with their Commission-filed tariffs and for this reason, Pacific Power must collect from RYGEP the amounts specific in its rate schedules, no more, and no less. Failure to do so would violate the law. Any charges required by tariff may not be changed here.

The Court turned to Pacific Power's Oregon Rule 13, which governs RYGEP's minimum contract billing charges, which states as follows:

I. Line Extensions – Conditions and Definitions

[* * *] B. Contract Minimum Billing

The Contract Minimum Billing is the greater of: (1) the Consumer's monthly bill; or, (2) 80% of the Consumer's monthly bill plus the Facilities Charges. [* * *] Contract Minimum Billings begin on the date service is first made available by the Company, unless a later date is mutually agreed upon.

The Court said, however, that "While Pacific Power provided a number of details about cost in its motion to dismiss, and provided a detailed description of its estimating process during the September 1 prehearing conference, it appears that one element of the Contract Minimum Billing calculation is not derived exclusively from Pacific Power's tariffs. Under Pacific Power's Rule 13, Contract Minimum Billing charge is calculated as 80 percent of the Consumer's monthly bill for electric service plus a "Facilities Charge." Pacific Power's Schedule 300 states that a Facilities Charge is either 0.67 percent of "installed cost" per month for facilities installed at the consumer's expense, or 1.67 percent of "installed cost" per month for facilities installed at the Company's expense."

The Court held that "The 'installed cost' of the facilities is not mandated by tariff. It appears the installed cost of the facilities in this case is the same as Pacific Power's construction estimate, an estimate established through Pacific Power's own internal procedures, rather than mandated by tariff.

The Court found insufficient fulfillment according to law that "As a result, the record does not support a conclusion that the installed cost of the facilities in this case is reasonable as a matter of law. RYGEP is therefore entitled to challenge the reasonableness of Pacific Power's construction estimate."

In holding as the Court does, the explanation of the ruling was "Pacific Power's motion to dismiss RYGEP's challenge to the minimum contract billing count is therefore denied."

V. CITATIONS TO SUPPORT JUDGEMENT

ORS 757.310(1) states that 'Prohibition related to charges for service. (1) A public utility may not charge a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances.'

ORS 757.310(2) states that [a] public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances.'

ORS 757.325 states that [1] No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect. (2) Any public utility violating this section is guilty of unjust discrimination.

VII. ANALYSIS

The Court recognized that Pacific Power as electric utility must charge customers in accordance with their Commission-filed tariffs and must collect from RYGEP the amounts specific in its rate schedules, no more and no less. The Court held that failure to do so would violate the law. Any charges required by tariff may not be changed here.

The Court however, did not support the detailed description Pacific Power provided of its estimating process and held that "one element of the Contract Minimum Billing calculation is not derived exclusively from Pacific Power's tariffs..... "The "installed cost" of the facilities is not mandated by tariff."

The Court said that "It appears the installed cost of the facilities in this case is the same as Pacific Power's construction estimate, an estimate established through Pacific Power's own internal procedures, rather than mandated by tariff."

The Court found insufficient fulfillment according to law that "As a result, the record does not support a conclusion that the installed cost of the facilities in this case is reasonable as a matter of law. RYGEP is therefore entitled to challenge the reasonableness of Pacific Power's construction estimate."

The significance of the case is important to put into the proper context as the constant reminder in human history of the struggle between David versus Goliath, which is the same situation the Court has with one of the largest public utilities in the United States attempting to assert its control and influence over a small nonprofit organization whose sole purpose is to help American Indian youths. The RYGEP has created an effective method to reach out to the young people and help build and instill critical life skills and cultural knowledge to help them be true Human Beings. Specifically, we combine ancient traditions and values with the lessons inherent in golf to teach and improve life skills that will benefit Indian youth in their every day life.

The program uses golf and its inherent values to teach and improve life skills of responsibility, sportsmanship, confidence, integrity, perseverance, respect, judgment, courtesy, honesty, and honor. The program uses golf to help bridge the generation gap by introducing young people to elders and mentors who walk the course with them and discuss everything from traditional culture to working on language and pronunciation. The RYGEP works to address the severe social, behavioral and health problems facing American Indian youth such as obesity, diabetes, high blood pressure, sedentary life styles, high school drop out rates, teenage pregnancy, drug and alcohol abuse, teenage suicide, unemployment and other social ills. The social, economic and health issues create a tremendous problem that demands a vigorous response from all Indian First Nations. We use golf as one way to counter these social dilemmas.

The nonprofit relies solely on outside foundations and charitable donations from all sources to operate an ever increasingly program on a very tight budget, so all expenditures are closely scrutinize by the RYGEP to remain competitive in order to conduct its mission for delivery of program services to the youth. The RYGEP closely scrutinize all costs and is constantly vigilante in its efforts to control costs, which led to the March 13, 2009 formal complaint of the contract minimum of the facilities charges were unreasonable.

There is a reasonable uncertainty about the applicability of Pacific Power's construction estimate, an estimate established through Pacific Power's own internal procedures, rather than mandated by tariff. The evidence and argument the Commission has before it suggest that Pacific Power's position according to the October 8, 2009 testimony is as follows:

"However, we are obligated to follow our tariffs, and we followed our tariff in this situation. And we charged the Rainbow Youth Golf Education Project in accordance with those tariffs. We charged the estimate of our installed costs. We charged the Rainbow Youth Golf Education Project a portion of that estimate, which we believe is fair and reasonable" (page 102).¹

Pacific Power's internal Retail Construction Management System (RCMS) formula applied in this case to calculate the construction estimate imposed "installed costs" is not supported by a relevant tariff upon which the formula is based. As demonstrated by the following chart, Pacific Power's application of their internal formula on the RYGEP is unreasonable and is unconscionable excessive.

Company	Construction Estimate	Actual Installed Construction Costs	Difference between Estimated & Actual
1. Pacific Power	\$13, 616.00	\$22,250.95	\$8,634.95
2. Rainbow Power & Excavating Inc.	\$8, 916.50		

The excessiveness of the construction estimate, the actual construction costs and accuracy of the internal formula becomes more apparent in light of testimony by Pacific Power representatives admission by stating that the calculations are based on tariff, which "...between the tariff and our standards, we have direct, very confined parameters on how we can design and build equipment" (page 71).

The record from Pacific Power's representatives does not provide convincing evidence that the costs are reasonable, considering the construction estimates are based upon the company's' internal formula and internal developed RCMS. There is uncertainty whether the internal formula and the internal developed RCMS are supported by relevant statute and whether the costs have accuracy. This conclusion is bolstered by the testimony set in forth on page 87 "Q. And does that figure differ from the actual costs?" The Pacific Power response:

"Yes it does, because of the particular voltage transformers that we had to order for this job were not in stock in our company at the time, so the cost that was in the company was the last time they were in the system, which as \$1700. When we ordered them from the manufacturer for the job they came in at – the estimating system said they were \$1400, but weren't in stock. Ordering them from the manufacturer, they charged us \$4279 per transformer."³

¹ As noted in the PacifiCorp Testimony Public Utility Board Hearing October 8, 2009.

² As noted in the PacifiCorp Testimony Public Utility Board Hearing October 8, 2009.

³ As noted in the PacifiCorp Testimony Public Utility Board Hearing October 8, 2009.

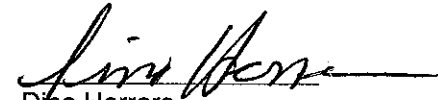
Applied to the assumed facts, it is difficult to believe that the Commission intended for any part of Pacific Power's Line Extension "Installed Costs" have not been adequately addressed or approved as a tariff.

VII. CONCLUSION

For these reasons enumerated above, RYGEP respectfully requests that based on the assumed facts, the Commission find PacifiCorp "installed costs" to be unreasonable, unconscionable excessive and burdensome to the consumer.

Dated: October 20, 2009

Respectfully Submitted,



Dino Herrera
Chair

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Respectfully Submitted,



William E. Ray, Jr.
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