

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UCB 71

Paul Spies d/b/a Waverly Townhomes LLC.,
Complainant,

v.

PACIFICORP D/B/A PACIFIC POWER,
Defendant.

**PACIFICORP’S ANSWER AND
MOTION TO DISMISS**

1 Consistent with ORS 756.512 and OAR 860-001-0400, PacifiCorp d/b/a Pacific Power
2 (PacifiCorp or the Company), defendant in this proceeding, files this Answer and Motion to
3 Dismiss to the Complaint of Paul Spies d/b/a Waverly Townhomes LLC (Complainant) received
4 on December 29, 2022 (Complaint). PacifiCorp answers and requests the Public Utility
5 Commission of Oregon (Commission) dismiss this Complaint for failure to state facts sufficient
6 to constitute a claim.

I. NATURE OF THE CASE

8 Complainant alleges that the Company has refused to allow a temporary master metering
9 on an apartment complex while the Complainant awaits the delivery of certain equipment to
10 install individual unit metering.¹

II. ANSWER

12 The Complainant has brought a formal complaint because the Company has refused to
13 take actions that are in violation of PacifiCorp’s approved tariffs and Oregon law. Complainant
14 is developing an apartment complex in Albany, Oregon and they have been unable to secure the

¹ Formal Customer Complaint at pg. 2 (Dec. 29, 2022), [hereinafter “Complaint”].

1 necessary electrical service equipment to allow for individual metering at the apartment complex
2 as a result of “shipping delays” and “equipment shortages.”² As a result, the Complainant has
3 insisted that the buildings should be master metered until the necessary electrical service
4 equipment can be sourced.³

5 PacifiCorp is unable to accommodate this request. Under Rule 8 of PacifiCorp’s tariff,
6 Subsection I.B., “service to multi-unit residential buildings where residency is permanent in
7 nature and constructed subsequent to January 1, 1979, shall be provided only if it is possible for
8 the Company to directly meter and bill the occupant of each dwelling unit.”⁴ This tariff
9 provision requires that when PacifiCorp provides service to multi-family residential building,
10 each unit must be separately metered. This prohibition on master metering is consistent with the
11 federal standards established by the Public Utility Regulatory Policy Act of 1978, which
12 established a policy against master metering in new construction when occupants have control
13 over the energy usage for their unit in a building.⁵ This ensures that occupants with control over
14 their energy usage are sent appropriate price signals for their energy usage and to promote
15 energy efficiency.

16 PacifiCorp’s tariff does provide an exception to this requirement that only applies if four
17 specific conditions are met. The fourth condition is that if the “electric load controlled by the
18 tenant is projected to be 250 kWh or less per month.”⁶ However, as noted in the documents
19 attached to the formal complaint, the projected usage for each unit was approximately

² Complaint at pg. 12 (pg. 1-2 of Oregon Public Utility Commission Informal Complaint record).

³ Complaint at pg. 15 (pg. 4 of Oregon Public Utility Commission Informal Complaint record).

⁴ Exhibit A, PacifiCorp’s Tariff, P.U.C.O. OR No. 36, Rule 8 at 1 (Effective Aug. 10, 2022).

⁵ 16 USC §§ 2623(b)(1) and 2625(d)(2).

⁶ Exhibit A at 1.

1 823 kilowatt-hours per month.⁷ As a result, this development fails to qualify for the individual
2 metering exemption.

3 PacifiCorp is required to follow its tariffs and Oregon law prohibits the Company from
4 providing any sort of preferential treatment or selectively enforcing the rules or requirements of
5 tariffs.⁸ The Complainant is specifically requesting that PacifiCorp not follow our Commission
6 approved tariffs and allow master metering on a multi-family residential development when they
7 do not qualify for the exception. For the Company to allow an exception for this customer would
8 provide “undue or unreasonable preference or advantage” to the Complainant.⁹ Such treatment
9 is inappropriate, and PacifiCorp does not have the authority to grant the relief that the
10 Complainant has requested.

11 **III. MOTION TO DISMISS AND AFFIRMATIVE DEFENSES**

12 The Company moves to dismiss the complaint for failure to state facts sufficient to
13 constitute a claim. ORS 756.500(3) requires the complainant to state grounds for relief or
14 violation of any law claimed to be committed by the defendant. The Complainant cites no
15 statute, administrative rules or other authority pertaining to the Company’s service to the
16 Complainant for which the Company may be found in violation by the Commission, as required
17 by ORS 756.500(3). Additionally, ORCP 21(A) governs the Commission review of a motion to
18 dismiss and appropriate grounds for dismissal is “failure to state ultimate facts sufficient to
19 constitute a claim.”¹⁰ The Complainant’s claim has failed to state any facts where PacifiCorp has
20 violated a statute, administrative rules, or the Company’s tariff.

⁷ Complaint at pg. 23 (pg. 12 of Oregon Public Utility Commission Informal Complaint record).

⁸ See ORS 757.325.

⁹ *Id.*

¹⁰ *B.R., Complainant v. Portland General Electric Co., Defendant*, Docket No. UCR 181, Order No. 17-257 (2017 WL 3035586) at *3 (Jul. 13, 2017).

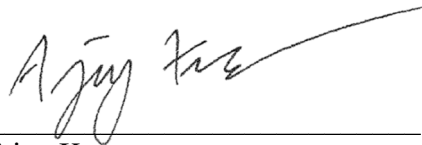
1 In fact, as described above in the Company’s answer, the Company is acting in
2 accordance with its filed and Commission-approved tariffs. Additionally, for PacifiCorp to
3 provide the relief requested by the Complainant, those actions would violate ORS 757.325 by
4 providing undue or unreasonable preference to an individual customer. As a result, PacifiCorp
5 respectfully requests that the Commission dismiss this Complaint with prejudice. PacifiCorp
6 additionally reserves the right to raise additional affirmative defenses or to withdraw any of the
7 foregoing affirmative defenses as may become necessary during the investigation and discovery
8 of this matter.

9 **IV. CONCLUSION**

10 The Complainant fails to state grounds upon which the Commission can grant relief and
11 specifically faults the Company for following its tariff.

12 WHEREFORE, having answered Complainant’s complaint, PacifiCorp requests the
13 Commission dismiss the Complaint without a hearing, with prejudice.

Respectfully submitted this 13th day of January, 2023,



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Exhibit A – PacifiCorp’s Tariff Rule 8

I. Metering – General**A. Installation, Maintenance and Registration**

The Company will install and maintain all meters and other equipment necessary for measuring the electric power and energy used by the Customer and will inspect such installations to maintain a high standard of accuracy.

The Company will, without charge, make a test of the accuracy of registration of a meter upon the request of the Customer or their ESS, provided that the Customer does not request such a test more frequently than once in twelve (12) months. If more than one requested test is made in twelve (12) months, the Company may charge the Customer a meter test charge as specified in Schedule 300. If results of the test show that such meter is outside the 2% accepted tolerance standard under normal operating conditions, the Company may not charge the Customer for the subsequent test(s).

An accurate record will be kept by the Company of all meter readings, and such record shall be the basis for determination of all bills rendered for metered service.

If any meter shall fail to register correctly the amount of electric power or energy used by the Customer, the amount of such use will be estimated by the Company from the best available information.

B. Individual Metering

Separate premises, even though owned by the same Customer, will not be supplied through the same meter, except as may be specifically provided for in the applicable rate schedule.

Other than the exemptions in Section C, service to multi-unit residential buildings where residency is permanent in nature and constructed subsequent to January 1, 1979, shall be provided only if it is possible for the Company to directly meter and bill the occupant of each dwelling unit.

C. Residential Use Exemptions to Individual Metering (criteria for Master-Metering)

Multiple residential units where the units do not have permanent facilities for sleeping, bathing and cooking, which are supplied through a common meter, may not be sub-metered and will be classified as nonresidential service.

Multiple residential units where residency is permanent in nature and constructed subsequent to January 1, 1979, and have facilities for sleeping, bathing and cooking in each unit, may be supplied through a common meter if the units meet all of the following numbered criteria. The service will be classified as residential and billed on the applicable general service rate schedule.

1. Documentation that the multiple residential units have received the necessary exemptions to individual metering as required by the Oregon State Building Code,
2. The units are not sub-metered,
3. Space heating, ventilation, and cooling (HVAC) is provided through central systems to each individual residential unit, or if an all-electric building HVAC may be provided by individual or shared heat pumps supplying both heating and cooling to each individual residential unit, and
4. The electric load within each unit that is controlled by the tenant, excluding any individual load from item 3., is projected to be 250 kWh or less per month and the Company has been provided reasonable substantiation of the load projection.

(continued)

I. Metering – General (continued)

D. Meter Verification Fee and Meter Labeling

When multiple meters are installed at a location with multiple units, it is the developer/owner’s responsibility to permanently, and correctly, label each meter base for the associated service address. The Company may check such meter installations to verify they are correctly labeled. The Company will charge the Meter Verification Fee, set forth in Schedule 300, to the developer/owner for each meter installation checked. In the event all meters are labeled correctly for each unit, the Company will waive the Meter Verification Fee for that building.

When a complaint is received from a Customer, landlord or governmental agency of possible switched meters, the Company will check such meter installations to verify that they are correctly labeled. The Company will charge the Meter Verification Fee, as set forth in Schedule 300 to the developer/owner for each meter installation checked. If all meters at a building are correctly labeled for each unit, the Company will waive the Meter Verification Fees for that building. If a Customer or landlord requests more than one meter installation verification within any 12-month period, the Company will require the requesting party to pay the Meter Verification Fee as set forth in Schedule 300, in advance. If the Company determines that the meter is switched or mislabeled, it will refund the deposit to the Customer and the Company will charge the Meter Verification Fee set forth in Schedule 300, to the developer/owner for each meter installation checked.

If a developer/owner or landlord requests the Company to verify or certify that each meter base is labeled correctly, including when locations with multiple units are sold, the Company will charge the party requesting such verification or certification the Meter Verification Fee, as set forth in Schedule 300.

II. Metering – Direct Access

A. Direct Access Meter Requirement

The Company’s metering standard for Direct Access and Standard Offer Consumers is for remotely interrogated interval metering equipment. Direct Access and Standard Offer Consumers that do not have installed remotely interrogated interval meters may be metered using other approved Company metering equipment. In the absence of a meter installation backlog, the Company will endeavor to install standard meter equipment within 30 days of acceptance of a DASR or receipt of written or electronic authorization for Standard Offer Service. In the event of a backlog, the Company will notify the Consumer or Consumer’s ESS and provide an estimate of the installation date. The Company will provide metering equipment for all Consumers.

B. Meter Charge

Direct Access and Standard Offer Consumers taking Company-specified metering services are obligated to pay the direct access metering charges stated in Schedule 300. Consumers taking non-standard metering services as described in Section II.E of this Rule are obligated to pay the metering charges specified in the applicable contract.

C. Standard Services

The Company will provide Standard Metering Services without charge to Large Nonresidential Consumers and will provide Standard Metering Services at a charge stated in Schedule 300 to Small Nonresidential Consumers. Standard Metering Services provided in conjunction with Direct Access and Standard Offer Service include:

(continued)

II. Metering – Direct Access (continued)**C. Standard Services (continued)**

1. An interval meter equipped with a communication modem.
2. Installation, removal, testing and maintenance of the meter.
3. Remote communication equipment. Calling fees will be passed through to the Consumer.
4. The meter readings and the results provided to ESS' will be the same as those used as the basis for the Company's charges.
5. The standard method of communicating results of meter reading is specified in the standard form of the Company's ESS Service Agreement.

D. Standard Meter Capabilities

These include interval and remote communication functions.

E. Non-Standard Services

An ESS may request that the Company provide non-standard metering capabilities, functions or services.

1. Requests must be submitted to the Company in writing.
2. The Company will consider and approve or deny the request within ten (10) business days.
3. The Company will file with the Commission rates and charges for non-standard metering capabilities, functions or services within thirty (30) days of approving a request.

Terms and conditions for approved non-standard metering capabilities, functions or services will be incorporated into the Company's ESS Service Agreement.

III. Non-Radio Frequency Metering Accommodation

A Customer may request an alternative to the Company's standard radio frequency meter installation from the following:

- a. Relocation of the Customer's meter base to a different location approved by the Company and the installation of a standard meter;
- b. Relocation of the Customer's meter base to a different location approved by the Company and the installation of a Company approved non-radio frequency meter;
- c. Exchanging a standard meter for a Company approved non-radio frequency meter.

A Customer selecting the option to relocate the meter base will be subject to the meter installation requirements of this regulation as well as Electric Service Rule 13. If the relocation requires a change in the existing service the Customer is responsible for charges to relocate the service including but not limited to the installation of conduit, trenching, obtaining easements, and any additional costs of removing and installing new facilities. If an acceptable meter location cannot be provided on the premises, the Customer's request will not be granted. The Customer must provide written permission of the owner stating the Customer has obtained the owner's permission to proceed with relocating the meter base.

(continued)

III. Non-Radio Frequency Metering Accommodation (continued)

Customers who elect to have a non-radio frequency meter will be subject to installation of the non-radio frequency meter as set forth in Schedule 300. All applicable fees will be paid prior to the installation of the non-radio frequency meter. The Schedule 300 charges for the installation is in addition to any aforementioned costs to relocate the Customer's service.

If a radio frequency meter is installed at the Customer's premise prior to January 1, 2018 and the Customer requests a non-radio frequency meter, the Customer will not be required to pay the installation charge in Schedule 300.

Only non-radio frequency meters approved, obtained, installed, and owned by the Company will be allowed. The Customer's request to replace a radio frequency meter with a non-radio frequency meter cannot be accommodated until an approved non-radio frequency meter can be obtained by the Company.

All Customers with a non-radio frequency meter shall be responsible to pay the monthly meter reading fee in Schedule 300, which will be included in the Customer's monthly service billing.

Customers with non-radio frequency meters may be excluded from participating in Company offered programs for which a standard radio frequency meter is required.

The Company may revoke the meter exchange accommodation of a non-radio frequency meter by reinstalling the Company's standard radio frequency meter for any of the following conditions:

- a. Meter tampering;
- b. Impeding Company access to the meter to obtain monthly meter readings, perform maintenance or to disconnect meter for non-payment of electric service; or
- c. Service has been disconnected for non-payment of electric service twice within a 12-month period.

Customers opting-out of the Company's standard metering and are metered by a non-standard meter and are otherwise eligible for service under Schedule 4 Residential Service or have a meter without a demand register and are eligible for service under Schedule 23 General Service, Small Non-Residential may contract with the Company for a triannual meter reading schedule. Meter readings will be three times a year and monthly billings between meter readings will be based on estimated usage assumptions. At the discretion of the Company, meter readings may be more frequent without any additional charge to the Customers. Customers are required to pay the triannual meter reading fee as stated in Schedule 300, and enroll in the Company's Equal Payment Plan as described in Rule 10 of this tariff.

The Company reserves the right to remove a Customer from the triannual read program for any of the following reasons:

The Customer is disconnected for nonpayment of bills,
The Customer fails to abide by the terms of the Equal Payment Plan, or
Safe and unobstructed access is not provided to the Company.

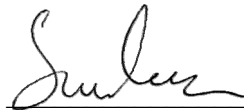
This option is not available for service in conjunction with net metering or time-of-use schedules.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th of January, 2023, I caused to be served, via email, a true and correct copy of the foregoing document on the following named person(s) at his or her last-known email address indicated below.

SERVICE LIST UCB 71

Paul Spies
Waverly Townhomes LLC
spiespaul@gmail.com



Santiago Gutierrez
Coordinator, Regulatory Operations