ORDER NO. 09-502
ENTERED 12/22/09

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1424

RAINBOW YOUTH GOLF EDUCATION PROGRAM, INC., Complainant, vs. PACIFICORP, dba PACIFIC POWER, Defendant.	ORDER

DISPOSITION: COMPLAINT DENIED

I. INTRODUCTION

On March 13, 2009, Rainbow Youth Golf Education Program, Inc. (RYGEP), filed a formal consumer complaint with the Public Utility Commission of Oregon (Commission) raising various issues related to PacifiCorp, dba Pacific Power's (Pacific Power or the Company) provision of electric service to RYGEP.

On April 2, 2009, Pacific Power timely submitted a motion to dismiss the complaint. On September 4, 2009, several counts of RYGEP's complaint were dismissed on the ground that the Commission lacked statutory authority to award the relief requested. The sole remaining issue, whether the cost of the line extension constructed by Pacific Power for RYGEP was reasonable, was identified for hearing.

On October 8, 2009, a hearing was held in this matter before an administrative law judge. During the hearing, testimony was taken and evidence was admitted into the record. Mr. William Ray, Sr., testified on behalf of RYGEP, and Mr. Dino Herrera made a comment for the record. Mr. F. Robert Stewart and Mr. Bob Hinkel testified on behalf of Pacific Power. After the hearing, the parties filed briefs and Pacific Power responded to bench requests. In this order, we deny RYGEP's complaint.

II. DISCUSSION

A. Background

The parties stipulated to the following statement of facts:[1]

RYGEP is a nonprofit organization located in Chiloquin, Oregon, that operates a program for American Indian youth. RYGEP's program "combine[s] ancient traditions and values with lessons inherent in golf to teach and improve life skills that will benefit Indian youth in their every day life."[2] As part of its program, RYGEP operates a summer golf program.

Recently, RYGEP's Board of Directors decided to develop the DMOLO Golf Facility, a nonprofit business open to the public that would include three golf holes, a driving range, and a practice area. The revenues generated from the facility are intended to support the youth programs and golf facility maintenance. RYGEP worked on the facility through the spring, summer, and fall of 2008, at which point RYGEP was ready to bring electricity to the site to power irrigation and begin establishing grass at the site.

In September 2007, RYGEP contacted Pacific Power about establishing electric service. The parties engaged in a series of discussions from September 2007 until October 2008. The discussions initially involved RYGEP's inquiries about the potential costs of constructing the facilities necessary to bring electricity to the site. Pacific Power provided ballpark figures, and by July 2008 RYGEP was ready to discuss the details of the project. Pacific Power sent RYGEP draft contracts. RYGEP responded by proposing a number of modifications to the form service contracts and easement agreements. Pacific Power agreed to some of the proposed changes but not others. Initially, the plan was for Pacific Power to remove existing facilities from RYGEP's site, construct an underground line, and primary meter the site. RYGEP then decided to remove the old powerline itself. These proposals resulted in changes to the parties' agreements, with the ultimate cost of constructing the necessary facilities estimated by Pacific Power at approximately $13,616.

Around September 5, 2008, RYGEP signed a service contract with Pacific Power. On September 9, 2008, Pacific Power ordered the equipment necessary for the job. Pacific Power states that it expected the materials to arrive on October 9, 2008, but they did not actually arrive until October 17, 2008. On October 14, 2008, Pacific Power authorized the connection of temporary electric service to the site. The remaining equipment was finally installed on October 21, 2008. Since then, RYGEP has received service from Pacific Power without incident.

On March 13, 2009, RYGEP filed a formal complaint with the Commission. RYGEP complained in the first count of its complaint that Pacific Power caused unnecessary

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[1] The factual recitation in this section was taken from the September 4, 2009, ruling on Pacific Power's motion to dismiss. During the hearing, the parties stipulated to the facts included therein.
[2] RYGEP's complaint at 1 (March 13, 2009).

delays in providing the requested electric service, which caused RYGEP to sustain various economic damages. In its second count, RYGEP complained that the contract minimum billing formula included in its contract with Pacific Power was unreasonable and should be changed. Finally, RYGEP complained that it was treated inequitably and unfairly by Pacific Power. On September 4, 2009, the scope of the hearing was narrowed to a single issue: whether Pacific Power's construction estimate for the line extension was reasonable.[3]

B. Legal Standard

Under Oregon law, RYGEP bears the burden of proving that the facts asserted in its complaint are more likely true than not.[4] In the specific context of this docket, RYGEP bears the burden of proving that Pacific Power's construction estimate was unreasonable.

C. Reasonableness of Pacific Power's Construction Cost Estimate

Before discussing the parties' positions, we briefly explain why the second count of RYGEP's complaint, which challenges RYGEP's contract minimum billing terms, raises the issue of whether Pacific Power's construction cost estimate was reasonable.[5]

Because Pacific Power was required to build a line extension to serve RYGEP, RYGEP's contract includes a "contract minimum billing" provision. That provision requires RYGEP to pay a certain amount each month for 60 months in connection with the construction costs. Under Pacific Power's tariffs, that minimum amount is derived from two components: (1) charges related to the amount of electricity RYGEP uses each month, and (2) monthly "facilities charges" to cover Pacific Power's cost of owning and maintaining equipment built to serve RYGEP. The basic terms of this contract minimum billing provision are derived from Pacific Power's Oregon Rule 13, a tariff filed with the Commission, which states in relevant part as follows:

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[3] *See* September 4, 2009, ruling in this docket, dismissing two counts because the Commission lacked legal authority to award the relief requested, and part of another count because the relief requested would conflict with an existing tariff.

[4] *See Jackson v. U S WEST Communications, Inc.*, Order No. 99-040 at 4 ("Complainant bears the burden of proving that the relief requested should be granted * * *. The burden of proof must be met by the preponderance of the evidence, that is, by establishing that the fact asserted is more probably true than not.").

[5] In the second count of its complaint, RYGEP seeks to modify the "contract minimum billing" terms in its contract with Pacific Power. With respect to the contract minimum billing terms, RYGEP originally sought to: (1) lower the Facilities Charges from $210.55 to $105.55 per month, (2) eliminate the 80 percent clause, and (3) reduce the payment period from five years to three years. The second and third of these requests were dismissed in the September 4, 2009, ruling on Pacific Power's motion to dismiss because they are governed by tariffs filed with the Commission.

I. Line Extensions – Conditions and Definitions

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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.

In RYGEP's contract, the contract minimum billing is "the greater of: (1) the monthly schedule billing; or (2) $210.55 plus eighty percent (80%) of the monthly schedule billings." The $210.55 represents the "Facilities Charges" described in Rule 13. Under Pacific Power's tariffs, a "Facilities Charge" is derived from the cost of the facilities constructed for the customer.[6] In this case, Pacific Power estimated that the installed cost of the facilities would be $13,616. Under the required formulas, the $13,616 estimate yielded the $210.55 in Facilities Charges.

1. Parties' Positions

RYGEP. RYGEP asserts that Pacific Power's estimate of $13,616 was simply too high, and that the minimum contract billing payment is therefore inflated. Mr. Ray worked as a journeyman lineman for 45 years and in 1996 formed a company called Rainbow Power and Excavating (Rainbow Power). His company has recent experience with a number of infrastructure projects, including building fiber optic lines for Pacific Power, running 47,000 feet of underground conduit for Pacific Power, and building an 11-pole electric line on the Columbia River for wind generation. According to Mr. Ray's estimate, the construction should have cost approximately $8,916.50.[7]

Mr. Ray did not take issue with the design parameters for the project, but provided his own estimate for the cost of the facilities constructed. He obtained prices for various elements of the job, including the pole, towers, and fixtures; overhead conductors and

[6] *See* Pacific Power's Schedule 300. Under Schedule 300, the Facilities Charges are calculated as "0.67% of installed cost of the construction per month" for facilities installed at the customer's expense, or "1.67% of installed cost per month" for facilities installed at the Company's expense. In this case, Pacific Power estimated the job at $13,616. It determined the Company's investment, also referred to as the customer's allowance (twice the estimated delivery service revenue), should be $11,932 based on the facilities at issue. This number was multiplied by 1.67 percent to yield $199.26. The remainder of the estimated cost, $1,684, was the "customer advance" that RYGEP was required to pay. Under Schedule 300, this amount was multiplied by 0.67 percent to yield $11.28. Together, the Facilities Charges totaled $210.55, the amount included in RYGEP's minimum contract billing provision. Tr. at 43-44.

[7] The design parameters for the line extension were not contested. RYGEP provided more than one construction estimate over the course of the proceeding, but the estimate discussed at the hearing is the most complete and is the only one we will address here.

devices; conduit; and cut-out brackets and primary metering equipment from HD Supply, an equipment supply company in Portland. In total, Mr. Ray estimated the materials should have cost $5,916.50. He estimated labor and vehicle costs should have been $3,000, which assumed the use of a three-person crew at $2,000 per day for one-and-a-half days. RYGEP's estimate totaled $8,916.50, approximately $4,700 less than Pacific Power's estimate.

Although he did not testify, Mr. Dino Herrera, Chairman of the Board for RYGEP, made a statement for the record. Mr. Herrera reiterated RYGEP's mission statement and emphasized that RYGEP is attempting to help youth in Klamath County during an economically difficult time. Mr. Herrero expressed regret that a company like Pacific Power would not help RYGEP by perhaps absorbing some of the costs of the line extension.

Pacific Power. Before providing an explanation of its costs, Pacific Power's witness Rob Stewart explained the process Pacific Power undertakes before constructing facilities at a customer's request.

According to Mr. Stewart, when Pacific Power receives a request for a line extension, it sends an estimator to meet with the customer to discuss the request and collect information needed to design the job. The estimator then takes the information, such as the route for the extension and the anticipated loads, and puts the required design components into Pacific Power's computerized construction management system, called Retail Construction Management System, or RCMS. RCMS returns information for the job, including costs, materials, and other elements. Mr. Stewart testified that Pacific Power uses RCMS not only for external jobs, such as RYGEP's, but also for the Company's own internal projects.

Mr. Stewart explained that RCMS pulls purchasing costs from Pacific Power's accounting system, which creates estimates using a combination of new purchasing information and the cost of materials the Company currently has in stock. Generally speaking, the system creates an average price that represents the actual cost of materials to Pacific Power. These RCMS costs are used in Pacific Power's estimates, and there is no mark-up of any materials costs.

According to Mr. Stewart, all costs not classified as materials costs in RCMS are classified as "labor costs," which are estimated using an "activity rate." The Company anticipates the time it will take to complete the job and applies its activity rate to estimate labor costs. Included in this activity rate are not only direct labor costs, but a number of other costs such as vehicle costs, and costs and various types of overhead, including direct supporting management. Mr. Stewart explained that Pacific Power reports its activity rate to the Commission each year in the Company's annual operational report.

Mr. Bob Hinkel, the estimator who actually prepared RYGEP's estimate, explained that RYGEP's line extension request was for a primary metering facility. According to Mr. Hinkel, a metering assembly typically has delivery voltage of

120-480 volts. A primary metering assembly, however, which RYGEP requested, is delivered at 12,000 volts. For this reason, Mr. Hinkel stated, the delivery system requested by RYGEP was not typical, but the job was a standard line extension for primary metering.[8] Mr. Hinkel stated that he changed no costs from the RCMS in preparing the estimate, and that the job was ultimately built according to that estimate.

Pacific Power provided a spreadsheet detailing the actual costs of completing the job, breaking down the costs of specific equipment and labor.[9] According to Mr. Hinkel, the actual cost of construction turned out to be significantly higher than Pacific Power's estimate, but RYGEP was only charged for the lower costs in the estimate. Pacific Power's estimate for materials was $6,446, compared to RYGEP's estimate of $5,916.50. Mr. Hinkel reviewed RYGEP's estimate and noted that for readily identifiable material items on that estimate, such as poles, pins, cutouts, arrestors, and other individual items, Pacific Power's costs were actually lower than RYGEP's. Mr. Hinkel explained that Pacific Power can generally obtain materials at a lower cost than most vendors and charges only these lower costs to customers.

Mr. Hinkel criticized the rest of RYGEP's estimate as inaccurate or lacking necessary elements. With respect to the cost of materials, Mr. Hinkel noted that RYGEP's estimate included a single entry for "primary metering equipment," which RYGEP estimated at $3,600. Mr. Hinkel explained that primary metering equipment includes a number of materials that, in total, would cost significantly more than $3,600. For example, Mr. Hinkel stated that the line extension required three transformers that Pacific Power estimated would cost $1,400 each, transformers that alone would exceed RYGEP's estimate for "primary metering equipment."[10] Mr. Hinkel noted that, in the end, Pacific Power did not have the correct transformers in stock to complete the job, so the Company had to order them. The transformers ultimately cost the Company more than twice what Pacific Power expected, though RYGEP was only held responsible for the estimated costs. Thus, Mr. Hinkel argued, RYGEP's estimate for materials was simply too low.

Pacific Power estimated labor costs at $7,170, compared with RYGEP's estimate of $3,000. Mr. Hinkel argued that RYGEP's estimate inappropriately excluded a number of elements that reflect actual costs to Pacific Power. For example, in addition to direct labor, the Company's labor cost estimate included travel time, preparation work, safety inspections, and other required activities. It also included labor for estimators and metermen, both of which were omitted from RYGEP's estimate.

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[8] Mr. Hinkel testified that, given the parameters of RYGEP's request, the only other design option would have been an underground system, which would have cost significantly more.

[9] The spreadsheet includes some costs that were designated confidential, so the individual elements of the spreadsheet will not be discussed in detail.

[10] Mr. Hinkel explained that primary metering equipment includes "[v]oltage transformers, potential transformers, a different type of arrestors, jumper wires, a meter base, a meter, connection wires, cords, and junction boxes, and a transformer bracket." Tr. at 76.

2. Resolution

Under Rule 13 of Pacific Power's General Rules and Regulations, which governs line extensions made at a customer's request, Pacific Power may require a customer like RYGEP to pay a contract minimum billing amount for five years in connection with a line extension. The contract minimum billing provision is intended to allow the Company to recover costs associated with the ownership and maintenance of facilities built to provide service to customers. In this case, RYGEP signed a contract that included a contract minimum billing provision based on Pacific Power's $13,616 estimate.

RYGEP challenges Pacific Power's estimate by providing a lower, competing estimate for the cost of the facilities. We will not provide a line-by-line comparison of the two estimates, in part because a number of Pacific Power's specific material costs are confidential. We conclude, however, that Pacific Power has more than adequately defended the reasonableness of the $13,616 estimate.

Under Rule 13, Pacific Power's extension costs include the Company's total costs for constructing a line extension, including, "services, transformers and meters, labor, materials and overhead charges."[11] Extension costs also explicitly include "designing, engineering and estimating" costs.[12] The evidence shows that key costs for the line extension project were omitted from RYGEP's estimate, omissions that more than account for the difference in the parties' estimates.

With respect to materials, the most important omission from RYGEP's estimate is primary metering equipment necessary for the job. Pacific Power testified that the project required three transformers that, themselves, exceeded RYGEP's $3,600 estimate for "primary metering equipment." Reviewing Pacific Power's materials costs, it is clear that the transformers themselves are sufficient to account for the difference in the parties' estimated cost of materials.[13] For items on RYGEP's estimate that are explicitly identified and directly comparable to Pacific Power's, such as poles, pins, cutouts, arrestors, and other individual items, Pacific Power's costs were actually lower than the costs included in RYGEP's estimate, suggesting that Pacific Power's baseline for materials costs is reasonable.

The same flaw—omission of key elements—appears in RYGEP's estimate for labor costs. Pacific Power estimated labor costs at approximately $7,170. The Company created this estimate by applying an "activity rate" to the estimated number of hours Pacific Power believed would be necessary to complete the job. The activity rate included not only direct labor for constructing the project, but a number of other costs including overhead (such as warehouse costs and costs of direct management), vehicle costs, travel time, preparation work, safety inspections, and other necessary activities, in addition to the actual construction of

[11] Pacific Power's Rule 13, I.E.
[12] Rule 13, I.C.
[13] RYGEP did not challenge Pacific Power's assertion that key materials were missing from RYGEP's estimate for "primary metering equipment."

the line extension. The estimate also included work by not only linemen and operators, but also by estimators and metermen.

These costs are all properly included in the calculation of line extension costs under Rule 13. Yet RYGEP's $3,000 estimate for labor costs appears to omit all costs for overhead, metermen, and estimators, as well as a number of other ancillary costs.[14] These excluded elements constitute actual costs to Pacific Power, and they more than account for the differences in the parties' estimated labor costs.[15]

In the end, we conclude that the costs charged to RYGEP for the project were reasonable. In fact, the record indicates that construction of the project involved repeated meetings, multiple trips to the site, equipment delivery issues, and contract changes that resulted in actual costs that were much higher than either party anticipated. Pacific Power did not charge RYGEP for the actual costs of the project, but only for the lower costs presented in the Company's estimate, which we find RYGEP has not convincingly challenged.

RYGEP expresses frustration that "one of the largest public utilities in the United States [is] attempting to assert its control and influence over a small nonprofit organization whose sole purpose is to help American Indian youths."[16] While we understand RYGEP's frustration with the costs involved in a line extension, we note that RYGEP specifically requested the primary metering facilities, that Pacific Power appears to have completed the project in accordance with RYGEP's request, and that RYGEP agreed to the terms of the tariff and payment provisions prior to construction.

Just as importantly, we note that under the law, Pacific Power is required to treat all of its customers equally. On the one hand, this means that Pacific Power may not charge one customer more than another for the same service, but it also means that Pacific Power may not charge one customer *less* than it would charge another customer for the same service.[17] Thus, Pacific Power was not permitted to absorb the cost of RYGEP's line extension; nor would it be authorized to charge RYGEP less for electric service than it would its other customers. The evidence shows that Pacific Power followed the same procedures and tariffs in its dealings with RYGEP that it would follow with any customer, as it was required to do.

In the end, Pacific Power incurred over $22,000 to complete the job, writing off time for extra equipment, design changes, and multiple trips for its crews. Under the circumstances, and given the evidence presented by Pacific Power, we cannot say that the $13,616 estimate, which was used to calculate RYGEP's responsibilities under the contract, was unreasonable. For that reason, RYGEP's complaint should be denied.

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[14] For example, permits and licensing.
[15] Moreover, Rule 13 explicitly includes services such as "designing, engineering and estimating" in Pacific Power's extension costs. Rule 13, I.C.
[16] RYGEP Brief at 3 (October 21, 2009).
[17] *See, e.g.*, ORS 757.310, 757.325.

III. ORDER

IT IS ORDERED that the complaint of Rainbow Youth Golf Education Program is denied, and this docket is closed.

Made, entered, and effective DEC 2 2 2009.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

PUBLIC UTILITY COMMISSION OF OREGON

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.