

ATTACHMENT C

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



March 21, 2024

Pooja Kishore
Regulatory Manager
PacifiCorp
825 NE Multnomah St., Suite 2000
Portland, Oregon

Subject: Staff Disposition of PacifiCorp (U 901-E) Tier 3 Advice Letter No. 721-E Modification to Rule 3 – Application for Electric Service

Dear Mr. Kishore,

PacifiCorp Advice Letter 721-E requests approval to add the following provision to Rule 3 - Application for Service:

F. LIMITATION OF LIABILITY

In any action between the parties arising out of the provision of electric service, the available damages shall be limited to actual economic damages. Neither party shall be liable to the other party for special, noneconomic, punitive, incidental, indirect, or consequential damages (including, without limitation, lost profits), regardless of whether such action is based in contract, tort (including, without limitation, negligence), strict liability, warranty or otherwise. By receiving electric service, customer agrees to waive and release Company from any and all claims for special, noneconomic, punitive, incidental, indirect, or consequential damages (including, without limitation, lost profits) as part of any claim against Company related to or arising from Company's operations or electrical facilities. This provision shall not be binding where state law disallows limitations of liability.

Pursuant to the Commission's General Order (G.O.) 96-B, Rule 7.6.1, the Energy Division by this letter rejects without prejudice PacifiCorp Advice Letter 721-E, submitted October 24, 2023.

Protests

No timely protests to this AL were submitted. Sierra Club submitted a late-submitted protest to the AL on March 14, 2024, and PacifiCorp submitted a reply on March 19, 2024. These late-submitted responses were not considered as part of Energy Division's disposition of this AL.

Background

On October 24, 2023, PacifiCorp filed Advice Letter (AL) 721-E for a tariff amendment to Rule 3 - Application for Service, to: (1) limit damages arising out of the Company's provision of electric services to actual damages; (2) exclude atypical damages (including special, noneconomic, punitive, incidental, indirect, or consequential); (3) only apply prospectively, and for actions arising out of the provision of electric service; and (4) would not apply where state law otherwise disallows the limitation.

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PacifiCorp stated that the tariff amendment “would enable it to finance expenditures at reasonable costs, as litigation to wildfires has increased its exposure to significant atypical damages...” and “would aid in both maintaining and potentially improving its current credit rating...”

Discussion

Rule 5.1 of G.O. 96-B specifies that a utility must have the necessary authority to request relief via an AL. A utility may request relief by means of an advice letter where it “has been authorized or required, by statute, by this General Order, or by other Commission order, to seek the requested relief by means of an advice letter.” Rules 5.3 and 7.6.1 of G.O. 96-B provide that industry division will reject without prejudice an advice letter that requires review in a formal proceeding. PacifiCorp’s proposed request to limit its liability arising out of its provision of electric services has not been authorized by statute, by G.O. 96-B, or other Commission order and is a matter that requires review in a formal proceeding. We therefore reject PacifiCorp’s advice letter without prejudice. PacifiCorp may file an application to request approval of its proposal as provided for in Rule 5.2 of G.O. 96-B.

Please direct any questions regarding Energy Division’s findings in this disposition to Isaac Tong (isaac.tong@cpuc.ca.gov).

Sincerely,

Handwritten signature of Leuwam Tesfai, followed by the text "FOR".

Leuwam Tesfai
Deputy Executive Director for Energy and Climate Policy/
Director, Energy Division
California Public Utilities Commission