

ATTACHMENT D

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Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR AUTHORITY TO REVISE ELECTRIC SERVICE RULE NO. 3 – ELECTRIC SERVICE AGREEMENTS	Docket No. 20000-__-ET-23 Application
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Rocky Mountain Power, a division of PacifiCorp (“Company” or “Rocky Mountain Power”), respectfully requests the Public Service Commission of Wyoming (“Commission”), approve the Company’s proposed amendment to Electric Service Rule No. 3 – Electric Service Agreements, (“Rule 3”), to provide for updated provisions regarding liability for a-typical damages. Attachment 1 to this Application contains a clean and legislative copy of Rule 3 with the proposed revisions.

In support of this Application, the Company states as follows:

1. PacifiCorp d/b/a Rocky Mountain Power, an Oregon corporation, provides electric service to retail customers as Rocky Mountain Power in the states of Wyoming, Utah, and Idaho, and as Pacific Power in the states of Oregon, California, and Washington.

2. Rocky Mountain Power is a regulated public utility in the state of Wyoming and is subject to the Commission's jurisdiction with respect to its prices and terms of electric service to retail customers in Wyoming. The Company serves approximately 150,000 customers and has over

1,000 employees in Wyoming. Rocky Mountain Power's principal place of business in Wyoming is 2840 East Yellowstone Highway, Casper, Wyoming, 82602.

3. Formal correspondence and requests for additional information regarding this matter should be addressed to:

By email (preferred): datarequest@pacificorp.com
stacy.splittstoesser@pacificorp.com
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By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
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With copies to: Stacy Splittstoesser
Wyoming Regulatory Affairs Manager
Rocky Mountain Power
315 West 27th Street
Cheyenne, Wyoming 82001

Informal questions may be directed to Stacy Splittstoesser, Wyoming Regulatory Affairs Manager at (801) 534-5018.

4. Consistent with Wyoming law and Commission rules, the Company requests the Commission approve the proposed amendment to Rule 3, which defines the general rules and regulations for electric service. The proposed tariff amendment would: (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. This provision strikes a reasonable balance between enabling actual damages when appropriate, and unreasonable treble damages.

5. This proposal generally aligns with precedent from several western states where limitations on utility liability have been approved by various state court and utility commissions. This includes Wyoming,¹ Washington,² and California,³ to name a few. These examples highlight the general understanding that, to ensure reasonable rates (among other considerations),⁴ limitations of liability provisions are an inherent part of the ratemaking process.⁵

6. To that end, Rocky Mountain Power’s tariffs include several Commission-approved limitations of liability. For example:

¹ See, e.g., *Cheyenne Light, Fuel and Power Company*, Wyo. P.S.C. Tariff No. 14, Original Sheet No. R22 (“The Company shall not be liable for injury to persons, damage to property, monetary loss, or loss of business caused by accidents, acts of God, fires, floods, strikes, wars, authority or orders of government, or any other causes and contingencies beyond The Company’s control.”), *Id.* (“The customer shall hold the Company harmless and indemnify it against all claims and liability for injury to persons or damage to property when such damage or injury results from or is occasioned by the facilities located on the customer’s side of the point of delivery unless caused by the negligence or wrongful acts of the Company’s agents or employees.”) (available here: https://www.blackhillsenergy.com/sites/blackhillsenergy.com/files/clfp_electric.pdf); *Montana-Dakota Utilities Co.*, Wyo. P.S.C. Tariff No. 1, Rate Schedule 100 Conditions of Service, at 9 (“The Company will not be liable for any loss, injury, death or damage resulting in any way from the supply or use of electricity or from the presence or operation of the Company's structures, equipment, lines, appliances or devices on the customer's premises, except loss, injuries, death, or damages resulting from the negligence of the Company.”) (available here: <https://www.montana-dakota.com/wp-content/uploads/PDFs/Rates-Tariffs/Wyoming/Electric/WYElectric100.pdf>).

² See, e.g., *Washington Water Service Company*, WN U-3, Original Sheet No. 15 (“The Utility’s liability, if any, for its gross negligence, willful misconduct or violation of RCW Chapter 19.122 is not limited by this tariff. With respect to any other claim or suit, by a customer or by any other party, for damages associated with the installation, provision, termination, maintenance, repair or restoration of service, the Utility’s liability, if any, shall not exceed an amount equal to the proportionate part of the monthly recurring charge for the service for the period during which the service was affected. THERE SHALL BE NO LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES.”) (available here: <https://www.wawater.com/docs/rates/rates-2023-1006.pdf>); *Puget Sound Energy*, WN U-60, Second Revised Sheet Nos. 80-e, 80-f (“Neither the Company nor any other person or entity shall have any liability to any Customer or any other person or entity for any disruption in service or for any loss or damage caused thereby if such disruption is attributable to [listing various actions]”) (available here: https://www.pse.com/-/media/Project/PSE/Portal/Rate-documents/Electric/elec_sch_080.pdf?sc_lang=en); *Citoli v. City of Seattle*, 115 Wn. App. 459, 481 – 486 (2002) (upholding limitation of liability).

³ *S. Cal. Edison Co. v. City of Victorville*, 217 Cal. App. 4th 218, 228 (2013) (“In approving a tariff, the PUC has the power to control that which in “any manner affect[s] or relate[s] to rates . . . or service.” . . . As part of this power, the PUC may also limit the liability of the utility to the public.”) (citation omitted).

⁴ *State Lands Comm’n v. Plains Pipeline, L.P.*, 57 Cal. App. 5th 582, 587 (2020) (“The rates for utilities that provide essential services to the public, such as water, electricity, and gas, must be kept low to allow even the most economically disadvantaged members of the public to obtain essential services. One way to keep rates low is to limit liability.”) (citations omitted).

⁵ *Lee v. Consolidated Edison Co.*, 413 N.Y.S.2d 826, 828 (N.Y.Sup.App.1978) (citing *Western Union Telegraph Co., v. Esteve Bros & Co.*, 256 U.S. 566 (1921)).

- The Company is “not liable for an error” caused by a customer’s description of their requested service. Rule 3(IV).
- There are various limitations on Company liability for various types of interrupted service (Rule 4(II)(B)(1)-(7)), including typical Force Majeure provisions.
- Regarding customer installations, the customers are “liable for any damage or injury resulting from the use of another power source” (Rule 5(II)(C)), and the Company’s liability “stops at the Point of Delivery” (Rule 5(IV)).
- Customers assume all risks and liability for applicant-built extensions. Rule 12(V)(A)(2).
- The Company is not liable “directly or indirectly for permitting or continuing to allow an attachment of a net metering facility, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.” Tariff Schedule 135, Special Condition 7.

7. The proposed tariff amendment would complement these existing limitations on liability. It also better enables the Company to finance expenditures at reasonable costs, as the increased risk of wildfire has led to litigation and greater exposure to significant atypical damages, including special, non-economic, punitive, incidental, indirect, or consequential, for utilities in the West. For example, as a result of recent wildfire litigation in Oregon, PacifiCorp’s credit was downgraded from A to BBB+. This directly impacts the Company’s ability to access low-cost financing necessary for the Company’s operations and investments to fulfill its service obligations to customers.

8. To the point, it is critical that the Company maintain an investment grade credit rating to minimize its cost of capital and access debt markets. Credit rating agencies assess a

company's creditworthiness and ability to meet its financial obligations, and ratings are based on various factors such as the company's financial health, debt levels, profitability, regulatory environment, and industry outlook. When a company has a higher credit rating, the company is considered less risky by lenders and investors and can typically borrow funds at lower interest rates. This lower cost of debt reduces the overall cost of capital for the Company. On the other hand, if a company has a lower credit rating or is considered higher risk, lenders and investors may demand higher interest rates or returns to compensate for the increased risk or be unwilling to offer financing.

9. Higher borrowing costs—as the Company may experience from the recent credit rating downgrade—will limit the Company's financial flexibility and impact its ability to more affordably invest in critical infrastructure upgrades, renewable energy projects, and other initiatives required to comply with the Company's legal and regulatory obligations. The Company's proposed language within Rule 3 to limit liability arising from atypical damages would aid in both maintaining and potentially improving its current credit rating for the benefit of customers while retaining the ability for customers to be compensated for actual damages when appropriate.

Conclusion

10. Rocky Mountain Power respectfully requests that the Commission approve the Company's proposed amendment to Rule 3.

DATED this 24th day of October, 2023.



Joe Dallas
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Attorneys for Rocky Mountain Power

ATTACHMENT 1
Proposed Tariff Sheets

ROCKY MOUNTAIN POWER

First Revision of Sheet No. B-4
Canceling Original Sheet No. B-4

P.S.C. Wyoming No. 17

Wyoming Table of Contents

Table of Contents Rules

<u>Rule No.</u>	<u>Rules</u>	<u>Sheet</u>
1	General Provisions	R1-1
2	General Definitions	R2-1 - R2-5
3	Electric Service Agreements	R3-1 - R3-3
	I. Application for Service	R3-1
	A. Application	
	B. Contracts	
	C. Joint Application	
	D. Change of Occupancy	
	E. Off-Hours Connect or Disconnect	
	II. Implied Service Agreement	R3-2
	III. Agreements, Rules and Rate Schedules	R3-2
	IV. Selection and Changes of Rate Schedule	R3-2
	V. Termination of Service Agreement	R3-2
	VI. Continuing Service	R3-3
	VII. Availability of Facilities	R3-3
	A. Disconnection of Facilities	
	B. Removal of Facilities	
	VIII. Limitation of Liability	R3-4
	<i>(continued)</i>	

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ROCKY MOUNTAIN POWER

First Revision of Sheet No. R3-3
Canceling Original Sheet No. R3-3

P.S.C. Wyoming No. 17

Electric Service Agreements Rule 3

VI. Continuing Service

If a Customer requests Disconnection of Service and, within 12 months, requests reconnection at the same Point of Delivery, and the facilities have not been removed, the Customer will be billed a Continuing Service Charge as specified in Schedule 300.

VII. Availability of Facilities

A. Disconnection of Facilities

The Company may disconnect service to delinquent accounts under **Rule 10**. The Company may take any action it deems appropriate to disconnect the service.

B. Removal of Facilities

The Company may remove facilities that are not used for 12 consecutive months unless there is a contract providing for continued availability. Failure to remove the facilities immediately does not eliminate the Company's right to remove the facilities at a later date.

The Company may remove the facilities sooner at the property owner's request. If the property owner requests service at the same Point of Delivery within 12 months, the Company will treat the request as a Relocation of Facilities under **Rule 12**.

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ROCKY MOUNTAIN POWER

Original Sheet No. R3-4

P.S.C. Wyoming No. 17

Electric Service Agreements Rule 3

VIII. 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.

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ROCKY MOUNTAIN POWER

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P.S.C. Wyoming No. 17

Wyoming Table of Contents

Table of Contents Rules

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	B. Removal of Facilities	
	<u>VIII. Limitation of Liability</u>	<u>R3-4</u>

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ROCKY MOUNTAIN POWER

First Revision of Sheet No. B-4
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P.S.C. Wyoming No. 17

Wyoming Table of Contents

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First Revision of Sheet No. R3-3
Canceling Original Sheet No. R3-3

P.S.C. Wyoming No. 17

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