

Agenda Date: December 21, 2023
Item Number: A2

Docket: UE-230877
Company: PacifiCorp d/b/a Pacific Power & Light Company

Staff: Kristen Hillstead, Regulatory Analyst
Dave Panco, Regulatory Analyst

Recommendation

Reject the proposed tariff filing.

Background

On October 24, 2023, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) filed with the Washington Utilities and Transportation Commission (Commission) revised tariff sheets to its WN U-76 tariff. The Company proposes to modify Rule 4 of its General Rules and Regulations – Application for Electric Service, Section H – Limitation of Liability. The tariff sheets had an effective date of November 27, 2023.

The Company proposes to limit its liability to actual economic damage. By taking service, a customer would agree to waive and release the Company from any and all claims for special, noneconomic, punitive, incidental, indirect, or consequential damages as part of any claim against the Company related to or arising from Company’s operations or electrical facilities.

Commission Staff (Staff) and the Assistant Attorney General (AAG) met with the Company to discuss concerns with and opposition to the proposed language. Staff and the AAG are concerned that the language proposed by the Company is counter to RCW 80.04.440 Companies liable for damages, which states:

In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was wilful, it may, in its discretion, fix a reasonable counsel or attorney’s fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation.

Although the tariff revision states that “[t]his provision shall not be binding where state law disallows limitations of liability,” Staff believes this creates unnecessary confusion regarding

the intended effect of the proposed tariff revision. The tariff revision either has no impact in light of RCW 80.04.440, in which case the revision serves no purpose, or the revision does limit liability, in which case Staff believes the revision should be rejected. Staff requested that the Company either withdraw the tariff filing or extend the effective date to continue discussions on the proposed language. On November 13, 2023, PacifiCorp filed for an extension of the tariff sheets until December 29, 2023.

Conclusion

Because no agreement regarding the inclusion of any limited liability language in the Company's tariff has been reached, Staff recommends the Commission reject the tariff filing proposed by PacifiCorp.