

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant

v.

**PacificCorp d/b/a Pacific Power &
Light Company,**

Respondent

Docket UE-230877

**AMICUS CURIAE BRIEF OF
AVISTA CORPORATION AND
PUGET SOUND ENERGY**

I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission (“Commission”) Notice of Opportunity for Amicus Briefing,¹ Puget Sound Energy (“PSE”) and Avista Corporation (“Avista”) respectfully submit this amicus curiae brief to emphasize the existential threat that wildfire risk presents to electrical companies and customers and to assert the Companies’ belief that such risk warrants substantive remedial action by the Commission, as exemplified by PacificCorp’s tariff filing.² Specifically, PSE and Avista write to underscore the urgency with which the Commission must act to protect Washington utilities and communities from the unfettered and unprecedented threat to the delivery of electricity posed by wildfire.

2. As the entity charged with “consumer protection for our state’s most essential services,”³ the Commission has an obligation—in its own words—“to ensure regulated

¹ *Wash. Utils & Transp. Comm’n v. Pac. Power & Light Co.*, Docket UE-230877 (“Docket UE-230877”), Notice of Opportunity for Amicus Briefing and Notice of Revised Procedural Schedule, (June. 04, 2024).

² Docket UE-230877, Tariff Filing, Tariff Sheets for WN U-76 (Oct. 24, 2023).

³ *History of the Commission*, [utc.wa.gov](https://www.utc.wa.gov/about-us/about-commission/history-commission), <https://www.utc.wa.gov/about-us/about-commission/history-commission> (last visited Jun. 18, 2024)

companies provide safe, reliable, and equitable service to customers at reasonable rates, while allowing them the opportunity to earn a fair profit.”⁴ To continue to provide such assurance, the Commission must use its authority to provide immediate and significant intervention into the issue of wildfire. Without such intervention, the overhanging risk of wildfire liability may imperil the financial health of Washington’s electric utilities and negatively impact reliability, affordability, and the clean energy transition.

II. DISCUSSION

3. Climate change brings new challenges to our region including increased risk of devastating wildfires. Despite a confluence of circumstances resulting in more frequent and larger wildfires, electric utilities are facing immense financial risks from wildfire-related damages, threatening utility solvency and the ability to invest in upgrades to infrastructure. This in turn, erodes the stability and reliability of the nation’s power supply and risks the success of the clean energy transition.

4. The electric industry faces an existential crisis. Uncapped liability, the departure of insurers from the wildfire market, wary ratings agencies and investors, and the resulting inability to raise capital, collide to threaten the viability of the electric utility sector. This risk also threatens Washington State’s clean energy transition, as an economically non-viable industry cannot make critical investments in resilience and clean energy.

⁴ *Energy*, [utc.wa.gov](https://www.utc.wa.gov/regulated-industries/utilities/energy), <https://www.utc.wa.gov/regulated-industries/utilities/energy> (last visited Jun. 18, 2024).

5. If the Commission addresses electric utility wildfire liability, as it has addressed liability for other utility activities,⁵ it will help allocate resources more effectively toward fire preparedness and mitigation activities, including system hardening, vegetation management, and grid modernization, thereby reducing the risk of future catastrophic fires. In contrast, expansive wildfire liability threatens all electric providers, whether they are investor-owned, public, or cooperative.

6. Unchecked and in the wake of a natural disaster, non-economic damages in particular create the potential—which has been realized in California and Oregon—for astonishing losses for electric companies. While companies search for protection, insurance companies are leaving the wildfire insurance market. Electric companies, not to mention homeowners, small businesses, and farmers, are increasingly unable to secure effective, affordable insurance to mitigate some of the staggering risks and losses.

7. This perfect storm threatens to destabilize the industry and erodes electric providers' ability to advance Washington State's clean energy goals. Prioritized by the Legislature, such a clean energy transition requires extraordinary investment by electric companies such as PSE. If a utility is attributed blame for a wildfire occurring in Washington, however, the utility's financial standing will immediately plummet. Ratings agencies and investors will lose confidence in the company's financial health, and its access to affordable capital—for recovery, ongoing operations, and critical investments in resilience and clean energy—will be gone.

⁵ See Puget Sound Energy, *Electric Tariff G, Schedule 80, General Rules and Provisions* (waiving all liability “for any disruption in service or for any loss or damage caused thereby”) available at https://www.pse.com/-/media/Project/PSE/Portal/Rate-documents/Electric/elec_sch_080.pdf?rev=cb4644fd0ea84847abaaf56c48a84ae7&sc_lang=en; accord Docket UE-230877, PacifiCorp Reply Brief at 5-8 (May 23, 2024) (discussing PSE's limitations of liability in Schedules 152 and 153 regarding interconnection to PSE's electric infrastructure).

8. In response to this unfolding threat, electric companies are swiftly and prudently acting to reduce wildfire risks. They are deploying new technologies to improve situational awareness and wildfire detection capabilities and investing in measures such as strategic undergrounding, covered conductors, and automatic reclosers with more sensitive settings. This approach balances the need for accountability with the practical realities of operating a complex electric system, including in wildfire-prone areas, ultimately protecting the utilities and the communities that they serve.

9. Nevertheless, due to the nature of the electric infrastructure, electric companies are being held responsible for a wide range of costs associated with wildfires, often without a determination of liability. Not only do utilities need rate recovery for wildfire mitigation work, they also need reasonable and fair liability protection. Otherwise, electric providers become the insurers of last resort for wildfire losses—despite meeting a widely accepted standard of care—and incur unsustainable increases in operating costs, which will impact customers profoundly.

10. Washington relies on affordable electricity and on the Commission to ensure the reliability that should be inherent in the electric system. PSE and Avista urge the Commission to take affirmative action, such as approving PacifiCorp's petition, opening a notice of inquiry, or initiating a rulemaking to protect Washington electric companies—and ratepayers—from uncapped liability and runaway non-economic damages related to wildfire. Without Commission action to protect Washington electric companies and ratepayers, the increasing wildfire risk, lack of third-party insurability, and resulting cost increases will have to be recognized in the ratemaking process.

III. CONCLUSION

11. PSE and Avista respectfully request that the Commission approve PacifiCorp's request. If the Commission determines it is unable to do so, PSE and Avista propose that the Commission use its discretion to narrow the request to target wildfire liability, use its notice of inquiry authority, or initiate a rulemaking.

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