

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PacifiCorp d/b/a Pacific Power & Light  
Company,

Respondent.

DOCKET UE-230877

ORDER 01

COMPLAINT AND ORDER  
SUSPENDING TARIFF REVISIONS

**BACKGROUND**

- 1 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.
- 2 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.
- 3 On November 13, 2023, the Company filed revised tariff sheets extending the effective date to December 29, 2023.
- 4 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, 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.

- 5 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. Staff reasons that 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 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.
- 6 On December 20, 2023, the Company filed additional comments requesting that the Commission approve the tariff revisions. The Company argues that its proposed tariff revisions are consistent with Washington state law and that limitations of liability in utility tariffs are common affirmative defenses. PacifiCorp further argues that its proposed tariff revisions are consistent with other limitations on liability approved by the Commission in the past.
- 7 Following the Company’s additional filed comments, Staff modified its recommendation and now requests that the Commission suspend the matter and initiate an adjudication.

## DISCUSSION AND DECISION

- 8 PacifiCorp’s proposed tariff revisions might injuriously affect the rights and interests of the public, and the Commission should investigate the justness and reasonableness of the

Company's proposed liability limitations through an adjudicatory proceeding. Pursuant to RCW 80.04.130(1), the Commission, therefore, suspends the tariff filing and will request briefing, and, if necessary, hold public hearings, to determine whether the Company's proposal is authorized by statute and, if so, whether the proposal is consistent with the public interest.

### FINDINGS AND CONCLUSIONS

- 9 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, regulations, and practices of public service companies, including electric companies and gas companies.
- 10 (2) PacifiCorp is an electric company and a public service company subject to Commission jurisdiction.
- 11 (3) The tariff revisions PacifiCorp filed on October 24, 2023, might injuriously affect the rights and interests of the public.
- 12 (4) PacifiCorp has not yet demonstrated that the tariff revisions are authorized by law or would result in rates that are fair, just, reasonable, equitable, and sufficient.
- 13 (5) the Commission believes it is necessary to consider legal arguments about the scope and intent of RCW 80.04.440. If the Commission finds that this statute does not bar Pacificorp's requested relief, the Commission will then conduct further inquiry, including, as authorized in RCW 80.04.130, to investigate PacifiCorp's books, accounts, practices and activities; to make a valuation or appraisal of PacifiCorp's property; and to investigate and appraise various phases of PacifiCorp's operations.
- 14 (6) The Commission finds that these Dockets meet the criteria of WAC 480-07-400(2)(b)(iii) and that the parties may conduct discovery pursuant to the Commission's discovery rules in WAC 480-07-400 – 425.
- 15 (7) As required by RCW 80.04.130(4), PacifiCorp bears the burden to prove that the proposed increases are fair, just, reasonable, equitable, and sufficient.
- 16 (8) PacifiCorp may be required to pay the expenses reasonably attributable and allocable to such an investigation, consistent with RCW 80.20.020.

**ORDER**

THE COMMISSION ORDERS:

- 17 (1) The tariff revisions PacifiCorp filed on November 22, 2023, are suspended.
- 18 (2) The Commission will hold hearings at such times and places as may be required.
- 19 (3) PacifiCorp must not change or alter the tariffs filed in these Dockets during the  
suspension period unless authorized by the Commission.
- 20 (4) The Commission will conduct briefing on the scope and intent of applicable law,  
and, if necessary, institute an investigation of PacifiCorp's books, accounts,  
practices, activities, property, and operations as described above.
- 21 (5) The parties may conduct discovery pursuant to the Commission's discovery rules  
in WAC 480-07-400-425.
- 22 (6) PacifiCorp d/b/a Pacific Power & Light Company shall pay the expenses  
reasonably attributable and allocable to the Commission's investigation consistent  
with RCW 80.20.020.

DATED at Olympia, Washington, and effective December 22, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner