

**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 02

PREHEARING CONFERENCE
ORDER; NOTICE OF ORAL
ARGUMENT

**(Oral Argument set for June 27,
2024, at 1:30 p.m.)**

BACKGROUND

- 1 **NATURE OF PROCEEDING.** 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, 2023.¹
- 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 amended tariff sheets extending the effective date to December 29, 2023.²
- 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

¹ *Wash. Utils & Transp. Comm’n v. Pac. Power & Light Co.*, Docket 230877, Tariff Filing, Tariff Sheets for WN U-76 (October 24, 2023).

² *Id.*, Amended Tariff Filing, Tariff Sheets for WN U-76 (November 13, 2023).

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 willful, 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 argues that this creates unnecessary confusion regarding the intended effect of the proposed tariff revision. Staff asserts 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 requested that the Commission suspend the matter and initiate an adjudication.
- 8 On December 21, 2023, Sierra Club filed comments on PacifiCorp's proposed revisions to Rule 4. In its comments, Sierra Club opposes the tariff revisions and argues that they are not in the public interest and requests that the Commission reject the proposed revisions, or, in the alternative, hold proceedings to determine the legal and policy implications of the proposed revisions.
- 9 On December 22, 2023, the Commission issued Order 01 suspending the November

13, 2023, tariff filing and requiring briefing to determine the legal question of whether the Company's proposal is authorized by statute and, if so, whether the proposal is consistent with the public interest. Order 01 also authorized hearings in this matter, including public comment hearings.

10 **CONFERENCE.** The Commission convened a virtual prehearing conference on February 6, 2024, before Administrative Law Judge James E. Brown II.

11 **REPRESENTATIVES.** Zachary Rogala represents PacifiCorp. Nash Callaghan, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff). Tad O'Neill, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Unit of the Attorney General's Office (Public Counsel). Contact information for the representatives of those granted party status is attached as Appendix B to this Order.

12 **PETITIONS FOR INTERVENTION.** No new parties appeared at the prehearing conference seeking to intervene.

13 **PROTECTIVE ORDER.** During the prehearing conference, Staff requested a protective order. In response, the presiding administrative law judge granted that request and stated that a protective order setting forth protective provisions would be issued in Order 03 of this docket.

14 **DISCOVERY.** Order 01 provides that discovery will be conducted under the Commission's discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution. If the parties are unable to resolve discovery disputes, the presiding administrative law judge encourages the parties to either file appropriate motions or to contact them to arrange for a discovery conference.

15 The Commission believes it will aid discovery in this case if all responses to discovery are shared with all parties. No party objects to the Commission making the exchange of discovery responses with all parties a requirement for discovery in this case. Accordingly, the Commission requires the parties to share every discovery response with all parties, subject to any confidentiality limitations contained in Commission rule or the Protective Order, Order 03, issued in this docket.

16 **PROCEDURAL SCHEDULE.** During the Prehearing Conference, the parties agreed to a proposed procedural schedule that includes a June 27, 2024, oral argument, if deemed necessary by the Commission. The procedural schedule is attached to this Order as Appendix A.

17 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and

serve all pleadings, motions, briefs, and other pre-filed materials in compliance with all of the following requirements:

- (a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files. Documents that include information designated as confidential must comply with the requirements in WAC 480-07-160 and the Protective Order in this docket.
- (b) Parties must submit documents electronically through the Commission's web portal (www.utc.wa.gov/e-filing). If a party is unable to use the web portal to submit documents for filing, the Commission will accept a submission via email to records@utc.wa.gov provided the email: (1) explains the reason the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b).
- (c) If any of the exhibits contain information designated as confidential, parties must file an electronic copy of the redacted version in searchable PDF (Adobe Acrobat or comparable software) of each such exhibit.
- (d) The Commission is continuing to suspend requirements for paper filings in this case for all submissions dating after the Company's initial testimony.
- (e) Documents filed with the Commission must conform to the formatting and other requirements in WAC 480-07-395 and WAC 480-07-460. Further, filed documents designated as confidential must comply with the requirements in WAC 480-07-160 and the Protective Order in this docket.
- (f) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (james.brown@utc.wa.gov) by 5 p.m. on the filing deadline unless the Commission orders otherwise. Pursuant to WAC 480-07-365(2)(c), all electronic documents submitted to the Commission must also be delivered to all parties and the presiding administrative law judge "at the same time" that the documents are submitted to the Commission or shortly thereafter. Please note as well that failing to provide a courtesy copy to the presiding administrative law judge may result in a delayed ruling on a motion or other filing. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

18 **PRE-FILED EXHIBITS.** Parties are required to file with the Commission and serve all proposed exhibits by 5 p.m., June 20, 2024. The Commission requires electronic copies (in a machine readable .pdf). If any of the exhibits contain information that is

designated as confidential or highly confidential, the party must also file one electronic copy (in a machine readable.pdf) and one paper copy of the redacted version of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits.

- 19 **EXHIBIT LISTS.** With each submission of pre-filed exhibits, the submitting party must include a preliminary exhibit list that identifies each submitted exhibit in the format the Commission uses for the exhibit lists it prepares for evidentiary hearings. PacifiCorp will prepare and file its preliminary exhibit list for its initial filing in this docket. Each party must file and serve a final list of all exhibits the party intends to introduce into the evidentiary record, including all pre-filed exhibits, as well as cross-examination exhibits by 5 p.m., June 20, 2024.
- 20 **PUBLIC COMMENT HEARING.** During the Prehearing Conference, the parties agreed that a public comment hearing should be held in this matter. Given the profound effect on the public because of the potential impact of the shift in liability, the Commission believes that it is in the public interest that a public comment hearing be held to receive comments from the public in this matter. Consequently, the Commission will hold a public comment hearing in this docket virtually, prior to the final disposition of this case. PacifiCorp customers will receive notice of the date, time, and access link to the public comment hearing, as well as other information required under WAC 480-90-197, at least 30 days prior to the date of the public comment hearing.
- 21 **NOTICE OF ORAL ARGUMENT.** The Commission shall determine whether to hold an oral argument in this docket. The Commission shall reserve the date of June 27, 2024, at 1:30 p.m. The Commission will issue a Notice should it decide to move forward with an oral argument in this matter. In that event, the oral argument will be a hybrid proceeding. Parties will be able to attend the hearing in person at the Commission's headquarters or the Commission will provide a link in the Notice for those who will attend virtually via Zoom.
- 22 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. If the Parties reach a settlement in principle and request suspension of the procedural schedule, the Parties should promptly inform the Commission of this.
- 23 The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Michael Howard, Director, Administrative Law Division (michael.howard@utc.wa.gov or (360) 664-1139).

24 **NOTICE TO PARTIES:** A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of this Order, in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this docket, subject to Commission review.

Dated at Lacey, Washington, and effective February 15, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ James E. Brown II
JAMES E. BROWN II
Administrative Law Judge

**APPENDIX A
PROCEDURAL SCHEDULE
DOCKETS UE-230877**

EVENT	DATE
Initial Brief by the Company	Friday, March 8, 2024
Response Briefs from Public Counsel and Staff	Friday, May 3, 2024
Company Reply Brief	Thursday, May 23, 2024
Notice Issued for Public Comment Hearing	30 days prior to Public Comment Hearing
Public Comment Hearing	Thursday, June 13, 2024
Prefiled Exhibits	Thursday, June 20, 2024
Oral Argument (if deemed necessary.)	Thursday, June 27, 2024
Statutory Suspension Date	October 29, 2024

APPENDIX B
PARTIES' REPRESENTATIVES
DOCKET UE-230877

PARTY	REPRESENTATIVE	PHONE	E-MAIL
PacifiCorp	Zachary Rogala PacifiCorp 825 NE Multnomah Street, Suite 2000 Portland, OR 97232	(503)-813-5161	zachary.rogala@pacificorp.com
Commission Staff	Nash Callaghan Assistant Attorney General Office of the Attorney General Utilities and Transportation Division P.O. Box 40128 Olympia, WA 98504	(360) 664-1188	Nash.Callaghan@atg.wa.gov
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