



October 24, 2023

VIA ELECTRONIC FILING

Kathy Hunter
Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Received
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RE: Advice 23-04—Rule 4—Application for Electric Service

In accordance with RCW 80.28.060 and WAC 480-80-121, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or the Company) submits the following revised tariff sheet applicable to PacifiCorp's electric service in the state of Washington. The Company respectfully requests an effective date of November 27, 2023.

<u>Sheet</u>	<u>Schedule/Rule</u>	<u>Title</u>
First Revision of Sheet No. R4.3	Rule 4	General Rules and Regulations Application for Electrical Service
Original Sheet No. R4.4	Rule 4	General Rules and Regulations Application for Electrical Service

Rule 4 outlines the Company's general rules and regulations for electric service. The accompanying revised tariff sheets provide for updated provisions regarding liability for a-typical damages.

The proposed tariff amendment would: (1) limit damages arising out of the Company's provision of electric services to actual damages; (2) exclude a-typical damages (including special, non-economic, 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.

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

Washington,¹ California,² and Wyoming,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

To that end, PacifiCorp's tariffs include several Commission-approved limitations of liability. For example:

- Customers indemnify PacifiCorp “for any and all liabilities, actions or claims for injury, loss or damage to persons or property arising from the resale of service by the Customer.” Rule 2(E).
- When two applicants apply for electricity service, they are jointly and severally liable, as opposed to either joint or several liability. Rule 4(A).
- Customers assume “all responsibility and liability” associated with purchased, abandoned, and decommissioned facilities at the time of permanent disconnection. Rules 6(I)(1)(b), 6(I)(2). Similarly, the Company's liability “shall cease at the point of delivery

¹ 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).

² *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).

³ 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>).

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)).

and the use of electric service beyond said point is at the risk and responsibility of the customer.” Rule 6(L).

- The Company’s liability is limited under standard Force Majeure provisions. Rule 10(G).
- Regarding unsafe wiring or equipment, the Company “does not assume the duty of inspecting or repairing the customer’s lines or appliances or apparatus or any part thereof and assumes no liability therefore.” Rule 11C(C).
- Regarding unauthorized reconnection/tampering, the person receiving service “shall be liable for any damage to Company property.” Rule 11D(C).
- There are various limitations on Company liability for various types of interrupted service. Rule 13(A)-(D).
- Customers assume all risks and liability for applicant built extensions. Rule 14(V)(A)(2).

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 a-typical 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.

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.

Higher borrowing costs—as the Company will 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 4 to limit liability arising from a-typical 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.

It is respectfully requested that all formal correspondence and requests regarding this filing be addressed to:

By e-mail (preferred): datarequest@pacificorp.com

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By regular mail: Data Request Response Center
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Please direct informal inquiries to Ariel Son, Regulatory Affairs Manager, at (503) 813-5410.

Sincerely,

 /s/

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Enclosures

Attachment A: List of Proposed Tariff Sheets
Attachment B: Proposed Tariff Sheets