

**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

INITIAL BRIEF OF PUBLIC COUNSEL

May 3, 2024

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I. INTRODUCTION

1. PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or the Company) proposes modifying Rule 4 of its General Rules and Regulations—Application for Electric Service, to impose a limitation of liability provision on consumers. By taking service, a customer would waive any and all claims for special, noneconomic, punitive, incidental, indirect, or consequential damages against PacifiCorp under any legal theory, regardless of PacifiCorp’s degree of culpability. The Washington Utilities and Transportation Commission (Commission) issued an Order suspending PacifiCorp’s proposed tariff revision and requesting briefing to determine the legal questions of whether the Company’s proposed limitation of liability is authorized by law, and, if so, whether it is consistent with the public interest.¹ It is neither.
2. First, Washington law preserves, by statute, causes of action against utilities by their customers. PacifiCorp’s proposed tariff revision would reduce the rights of consumers under the statute, and is therefore not authorized under Washington law. The Commission would thus exceed its statutory authority by approving the proposed tariff revision.
3. Second, the proposed liability limitation is unprecedented in its scope, and would unfairly require PacifiCorp’s customers to bear the consequences of the Company’s unlawful behavior. The waiver would strip PacifiCorp’s customers of their rights to recover all types of noneconomic damages (pain and suffering, emotional distress, etc.), as well as indirect economic damages (loss of use of real and personal property, lost profits, interruption of employment, lost business opportunities, etc.). In addition, the waiver would apply regardless of the type of action,

¹ *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-230877 Order 1: Suspension (Dec. 22, 2023).

and regardless of PacifiCorp's degree of culpability. Thus, PacifiCorp's customers would be prohibited from recovering damages for even grossly negligent, reckless, or willfully unlawful activity. PacifiCorp points to no precedent for such a sweeping waiver of liability in a utility tariff. Should the Commission conclude that Washington law permits the tariff revision, therefore, it should nevertheless decline to approve it.

II. BACKGROUND

4. On October 24, PacifiCorp filed revised tariff sheets to its WN U-76 tariff. The Company proposes to modify Rule 4 in relevant part as follows:

H. LIMITATION OF LIABILITY

In any action between the parties arising out of the provision of electric service, the available damages shall be limited to actual economic damages. Neither party shall be liable to the other party for special, noneconomic, punitive, incidental, indirect, or consequential damages (including, without limitation, lost profits), regardless of whether such action is based in contract, tort (including, without limitation, negligence), strict liability, warranty or otherwise. By receiving electric service, Customer agrees to waive and release Company from any and all claims for special, noneconomic, punitive, incidental, indirect, or consequential damages (including, without limitation, lost profits) as part of any claim against Company related to or arising from Company's operations or electrical facilities. This provision shall not be binding where state law disallows limitations of liability.

5. The proposed limitation of liability, if approved, would thus categorically prohibit PacifiCorp's utility customers from recovering any non-economic or indirect economic damages in any action against PacifiCorp under any legal theory and regardless of PacifiCorp's degree of culpability.

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III. ARGUMENT

6. The Legislature has entrusted the Commission with “broad generalized powers in rate setting matters.”² The Commission must regulate in the public interest,³ and the burden of proving that a proposed increase is just and reasonable is on the public service company.⁴ Here, the Commission has ordered briefing on two issues: (1) whether PacifiCorp’s proposed limitation of liability is authorized by law; and (2) whether it is in the public interest.

A. PacifiCorp’s Proposed Limitation of Liability is Not Authorized under Washington Law

7. In the Prehearing Conference Order,⁵ the Commission noted the concern, raised by Commission Staff, that PacifiCorp’s proposed limitation of liability is counter to RCW 80.04.440, which provides:

In case any public service company^[6] 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.

8. Washington courts have had few opportunities to consider the purpose and scope of RCW 80.04.440. In *Markoff v. Puget Sound Energy, Inc.*, the Washington Court of Appeals held

² *US West Commc’ns., Inc. v. Wash. Utils. & Transp. Comm’n*, 134 Wn.2d 48, 56, 949 P.2d 1321 (1997).

³ RCW 80.01.040(3).

⁴ RCW 80.04.130(4).

⁵ *PacifiCorp*, Docket UE-230877, Order 2: Prehearing Conference (Feb. 15, 2024).

⁶ The term “public service company” is defined, by statute, to include “every gas company, electrical company, telecommunications company, wastewater company, and water company.” RCW 80.04.010(23). There is no dispute that PacifiCorp is a “public service company” within the meaning of RCW 80.04.440.

that the statute does not create a private cause of action; rather, it “preserve[s] causes of action for private claims related to utility misconduct while adding the potential for recovery of attorney fees by successful claimants.”⁷ The court also noted that liability under the statute is “predicated upon a violation of law or safety regulation.”⁸ In *National Union v. Puget Sound Power & Light*, the Court of Appeals held that such predicate violations may include claims for negligence, gross negligence, and breach of contract.⁹

9. The threshold question before the Commission is whether RCW 80.04.440 prohibits the limitation of liability proposed by the Company. PacifiCorp argues to the contrary that utility tariffs “preempt RCW 80.04.440.”¹⁰ That is an incorrect statement of Washington law. It is well-established that tariffs properly filed and approved by the Commission have the authority of law;¹¹ the Commission exceeds its authority, however, if it approves a tariff that conflicts with existing statutory law. For example, the Washington Supreme Court held that the Commission exceeded its authority by approving a rate increase that violated RCW 80.04.250.¹² At issue was whether the Commission properly granted a rate increase to a power company for its electrical operations. The Supreme Court held that including construction work in progress (CWIP) in the base rate violated RCW 80.04.250, which empowers the Commission to determine, for ratemaking purposes, the fair value of property “used and useful for service” in Washington.¹³

⁷ *Markoff v. Puget Sound Energy, Inc.*, 9 Wn. App. 2d 833, 848–49, 447 P.3d 577 (2019).

⁸ *Id.* at 848 (citing *Zamora v. Mobil Corp.*, 104 Wn.2d 199, 209, 704 P.2d 584 (1985)).

⁹ *Nat’l Union Ins. v. Puget Sound Power*, 94 Wn. App. 163, 174-75, 972 P.2d 481 (1999).

¹⁰ Brief ¶ 4.

¹¹ *Moore v. Pac. Nw. Bell*, 34 Wn. App. 448, 455, 662 P.2d 398 (1983).

¹² *People’s Org. For Wash. Energy Res. v. Wash. Utils. & Transp. Comm’n*, 101 Wn. 2d 425, 430, 679 P.2d 922, 925 (1984) (hereinafter *POWER*); see also *Wash. Atty. Gen. Off., Pub. Couns. Unit v. Wash. Utils. & Transp. Comm’n*, 4 Wn. App. 2d 657, 680, 423 P.3d 861 (2018) (same).

¹³ *POWER*, 101 Wn.2d at 429–30.

The court reasoned that because CWIP was not “useful for service” the base rate violated the plain statutory language.

10. This result is consistent with the principle that the Commission, as an administrative agency, must act within the bounds of the authority expressly granted by statute, or necessarily implied within.¹⁴ It may not, therefore, by approving tariffs, “preempt” existing law. Rather, as *POWER* makes clear, the Commission must exercise its authority consistent with pre-existing Washington statutory law.
11. Accordingly, to the extent PacifiCorp’s proposed limitation of liability conflicts with the rights of utility customers under RCW 80.04.440, it must be rejected. Clearly, it does. The statute provides that utility companies “shall be liable ... for *all loss, damage or injury* caused” by their unlawful acts. (Emphasis added). PacifiCorp’s limitation of liability, however, would require utility customers to “waive and release ... any and all claims” for non-economic damages of any kind, as well as indirect economic damages. While the statute thus preserves claims against utilities for “all loss, damage or injury,” the liability waiver prohibits otherwise available remedies. It would thus reduce the rights of consumers under RCW 80.04.440, in effect partially repealing the statute. Public Counsel therefore respectfully submits that the Commission’s approval of PacifiCorp’s proposed tariff revision in derogation of the rights of consumers under RCW 80.04.440 would exceed its authority.
12. The Washington authorities discussed by PacifiCorp do not compel a different conclusion. In *Markoff*, relied upon by PacifiCorp,¹⁵ the Court of Appeals held that a utility

¹⁴ *Wash. Indep. Tel. Ass’n v. Telecomm. Ratepayers Ass’n for Cost-Based & Equitable Rates*, 75 Wn. App. 356, 363, 880 P.2d 50 (1994).

¹⁵ Brief ¶ 4.

company could raise the professional rescuer doctrine as an affirmative defense in an action brought by firefighters in part under RCW 80.04.440.¹⁶ The court reasoned that because the statute preserves private causes of action against utilities—rather than creates a new cause of action—otherwise applicable affirmative defenses were therefore available.¹⁷ PacifiCorp argues that its proposed limitation of liability is, likewise, “an affirmative defense[] that preempt[s] RCW 80.04.440.”¹⁸ This circular reasoning evades the threshold question of whether the limitation of liability violates RCW 80.04.440 in the first place—which it does.

13. PacifiCorp also relies on *Allen v. General Telephone Company of the Northwest*,¹⁹ for the proposition that “[v]irtually all jurisdictions have enforced such limitations and disclaimers of liability, whether contained in a filed tariff or a private contract, unless the company’s negligence is willful or gross.”²⁰ The reference to “such” liability limitations refers to errors or omissions in telephone directory listings. As an initial point, PacifiCorp’s reliance is misplaced because its proposed limitation of liability does not contain an exception for “willful or gross” negligence and therefore would not be authorized under *Allen*.²¹ More fundamentally, *Allen* did not address whether the limitation of liability before it would violate RCW 80.04.440, and it does not appear the issue was raised.

14. PacifiCorp also cites *National Union Insurance Company of Pittsburgh, Pa. v. Puget Sound Power & Light*,²² for the proposition that “[l]imitation of liability provisions are an

¹⁶ *Markoff*, 9 Wn. App. 2d at 849–50.

¹⁷ *Id.*

¹⁸ Brief ¶ 4.

¹⁹ *Allen v. Gen. Tel. Co.*, 20 Wn. App. 144, 149, 578 P.2d 1333 (1978).

²⁰ Brief ¶ 4.

²¹ See also, *infra* ¶¶ 32–33.

²² *Nat’l Union Ins. Co.*, 94 Wn. App. 163, 170, 972 P.2d 481 (1999).

inherent part of the ratemaking process.”²³ *National Union*, unlike *Allen*, addresses the interplay between limitation of liability provisions contained in tariffs and RCW 80.04.440—but it does not support PacifiCorp’s position. The utility company in *National Union* sought to rely on a tariff provision shielding it from liability for damages caused by service interruptions resulting from causes “beyond the Company’s reasonable control”—*i.e.*, a force majeure clause.²⁴

15. The specific question before the court was whether the force majeure clause relieved the utility from liability for damages concurrently caused by circumstances beyond its reasonable control and its own negligence.²⁵ The Court of Appeals held that the liability provision must be read consistent with RCW 80.04.440, such that “holding [the company] liable for its neglig[ence] ... would permit its customers to exercise their right to recover damages under RCW 80.04.440.”²⁶ The court accordingly held that the force majeure provision did not excuse the company from its own negligence.

16. The Court of Appeal’s holding in *National Union* is thus consistent with the conclusion discussed above that limitations of liability contained in tariffs may not abrogate the rights of consumers under RCW 80.04.440. The court’s conclusion that the force majeure provision limiting the utility’s liability did not conflict with RCW 80.04.440 is also instructive. It is not the case, therefore, as PacifiCorp suggests, that all limitations of liability may be approved by the Commission without consideration of whether they violate RCW 80.04.440. To the contrary, as

²³ Brief ¶ 5.

²⁴ *Nat’l Union Ins. Co.*, 94 Wn. App. at 168–69.

²⁵ *Id.* at 169.

²⁶ *Id.* at 174–75 (emphasis added).

National Union makes clear, where the issue has been raised courts will examine limitations of liability contained in tariffs to determine whether they conflict with the statute.

17. PacifiCorp also cites, but does not discuss,²⁷ *Citoli v. City of Seattle*,²⁸ which involved claims by a business owner arising from the termination of utilities to his business after police ordered the utility to shut down services while protestors occupied the building. The court noted the existence of a municipal code provision limiting Seattle City Light’s liability for interruption of electrical service due to circumstances beyond its control²⁹—*i.e.*, the same type of force majeure provision at issue in *National Union*, which the court held was consistent with RCW 80.04.440. Ultimately, however, the court did not rely on the municipal code provision in any event, holding that because the situation was beyond the control of the utility, it did not owe a duty to act in the manner demanded by plaintiff—thus, there had been no breach of duty, and plaintiff’s negligence claim failed as a matter of law.³⁰

18. In addition to these Washington authorities, PacifiCorp also relies on case law from other jurisdictions that likewise fail to support its position under Washington law. PacifiCorp relies particularly upon a recent California Supreme Court decision—*Gantner v. PG&E Corporation*.³¹ PacifiCorp summarizes *Gantner* as holding that a California statute (similar to RCW 80.04.440) that provides a private right of action against utilities was “preempted by another statute that bars actions that would interfere with the California Public Utilities Commission (PUC) in the

²⁷ Brief ¶ 4.

²⁸ *Citoli v. City of Seattle*, 115 Wn. App. 459, 465–66, 61 P.3d 1165 (2002).

²⁹ *Id.* at 479.

³⁰ *Id.* at 480.

³¹ *Gantner v. PG&E Corp.*, 538 P.3d 676 (Cal. 2023).

performance of its official duties.”³² That is not accurate. The court did not hold that the California private right of action statute was itself preempted; rather, the court held that a customer’s action for damages against a utility was preempted.

19. The statute given preemptive effect in *Gantner* vests exclusive jurisdiction in the appellate courts of California “to review, reverse, correct, or annul any order or decision” of PUC.³³ It is thus potentially in conflict with the private right of action statute. California courts have resolved this conflict by construing the private right of action statute “as limited to those situations in which an award of damages would not hinder or frustrate the commission’s declared supervisory and regulatory policies.”³⁴ Because the action at issue would interfere with PUC’s authority, it was preempted.

20. *Gantner* is thus distinguishable. First, as already noted, it does not even stand for the proposition asserted by PacifiCorp that RCW 80.04.440 is “preempted,” as the analogous California statute was not held preempted, but construed so as to not conflict with another California statute. Second, the California statute upon which the court based its holding vests exclusive jurisdiction to review PUC actions in the appellate courts of California; PacifiCorp does not identify any analogous Washington statute.

21. PacifiCorp also argues that the proposed tariff revision is consistent with Commission precedent approving limitations of liability in tariffs.³⁵ None of the liability limitations cited by

³² Brief ¶ 18 (citing *Gantner*, 538 P.3d at 677-68) (quotation corrected).

³³ *Gantner*, 538 P.3d at 681.

³⁴ *Id.*

³⁵ Brief ¶ 13–14.

PacifiCorp is remotely as sweeping as the one it proposes, however. Nor is it clear that they necessarily violate RCW 80.04.440.

22. For example, PacifiCorp cites force majeure provisions limiting liability for damages arising from causes beyond the utility company’s control.³⁶ As discussed above, the Washington Court of Appeals held that a similar liability limitation did not conflict with RCW 80.04.440.³⁷ Likewise, it does not appear that a provision limiting liability for “damages to persons or property from the use of customer equipment on the customer’s premise”³⁸ would implicate RCW 80.04.440, as such activity would not give rise to a cognizable claim of negligence in the first place.

23. In addition, it is notable that RCW 80.04.440 preserves causes of action arising from unlawful acts both under Washington law and under “this title or ... any order or rule of the commission.” As discussed above, Public Counsel respectfully submits that the Commission exceeds its authority by approving a limitation of liability in a tariff that reduces the rights of customers to bring an action predicated upon a violation of Washington law—because RCW 80.04.440 “preserves” such causes of actions. However, it appears that the Commission would be well within its authority to approve a tariff revision that impacted the rights of customers to bring an action predicated upon violation of the Commission’s own orders and rules. Limitations on liability for interruption of service, for example, would appear to fall into this category.

24. In other words, this is not an either-or situation. Public Counsel does not argue that RCW 80.04.440 precludes all limitations of liability for claims against public utilities—full stop. Rather,

³⁶ Brief ¶ 13.

³⁷ See ¶¶ 15–16 *supra*.

³⁸ Brief ¶ 13.

the statute, properly construed, precludes only those limitation of liability provisions that conflict with its plain terms. As discussed above, PacifiCorp’s proposed tariff revision does conflict, and therefore is prohibited by law.

25. Finally, PacifiCorp seeks to save its proposed tariff revision by pointing to the final sentence, which states: “This provision shall not be binding where state law disallows limitations of liability.” PacifiCorp asserts, based on this language, that “if there is any question whether PacifiCorp’s tariff conflicts with Washington law, Washington law controls” and that its “proposal clarifies that the liability limitation can only be applied when consistent with Washington law.”³⁹ This assertion cannot be squared with PacifiCorp’s argument that limitations of liability in utility tariffs “preempt RCW 80.04.440.” It cannot both be true that the proposed tariff revision “can only be applied consistent with” Washington law and, at the same time, “preempts” Washington law. PacifiCorp should clarify its position for the Commission.

26. In addition, PacifiCorp’s characterization of the tariff revision language as stating that “Washington law controls” in the event of any conflict is not consistent with the language itself. A plain reading of the final sentence suggests that it would apply only if state law specifically disclaims limitations of liability. RCW 80.04.440 does not specifically disclaim limitations of liability, but—as discussed above—it does conflict with the proposed tariff revision.

27. In summary, RCW 80.04.440 preserves private causes of action against utility companies. Tariffs do not “preempt” RCW 80.04.440, and the Commission should not disregard the statute when considering PacifiCorp’s proposed tariff revision, as the Company urges.

³⁹ Brief ¶ 5.

Rather, the Commission should consider whether the proposed tariff revision conflicts with the plain terms of the statute. Because it does conflict, the tariff revision is not authorized by Washington law.

B. PacifiCorp’s Proposed Limitation of Liability Is Not in The Public Interest

28. If the Commission concludes that it may approve the proposed tariff revision notwithstanding the operation of RCW 80.04.440, it should nevertheless decline to do so. The Commission will approve tariffs only if they are “just and reasonable.”⁴⁰ PacifiCorp’s proposed tariff revision fails to meet this standard. Indeed, the scope of the liability release proposed by the Company is exceedingly vast with respect to the scope of the damages precluded, and unlimited with respect to the claims asserted or the Company’s degree of culpability.

29. First, the language of the release takes in not only noneconomic damages—as PacifiCorp asserts—but certain types of economic damages as well. “Noneconomic damages” is typically understood to mean “subjective, nonmonetary losses” such as “pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship.”⁴¹ “Economic damages” means “objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities.”⁴² PacifiCorp’s proposed tariff

⁴⁰ RCW 80.28.010(3); *Nat’l Union Ins. Co.*, 94 Wn. App. at 171.

⁴¹ RCW 48.140.010(10).

⁴² RCW 48.140.010(5).

revision not only disclaims “noneconomic damages” but also “special ... incidental, indirect, or consequential damages (including, without limitation, lost profits).”

30. Properly understood, therefore, PacifiCorp’s proposed liability limitation forecloses recovery of not only noneconomic damages (i.e., subjective, nonmonetary losses), but also indirect or consequential monetary losses that would typically be considered “economic damages.” Thus, using damages caused by wildfire as an example (although, importantly, the proposed limitation of liability is not limited to wildfire damages⁴³), PacifiCorp’s customers would be precluded from recovery for not only noneconomic damages such as pain and suffering, but also “indirect” or “consequential” economic damages such as loss of use of real and personal property damaged by wildfire, including lost earnings and business profits as well as employment or business opportunities.

31. Indeed, it is likely that a Washington court would find the tariff revisions’ waiver of otherwise available remedies to be substantively unconscionable. Substantive unconscionability “involves those cases where a clause or term in the contract is alleged to be one-sided or overly harsh.”⁴⁴ In *Philpott v. Ernst & Young LLP*, the U.S. District Court for the Western District of Washington held—applying this standard—that an arbitration clause in an employment agreement that waived the right to consequential or punitive damages was unconscionable “because it limits employees’ relief to actual damages, even though other forms of relief would be statutorily available if employees could pursue their claims in court.”⁴⁵ Likewise here, the

⁴³ See, ¶ 36 *infra*.

⁴⁴ *Zuver v. Airtouch Commc’ns, Inc.*, 153 Wn.2d 293, 303, 103 P.3d 753 (2004).

⁴⁵ *Philpott v. Ernst & Young*, Dkt. C10-264RAJ, 2010 WL 11406230, at *7 (W.D. Wash. Dec. 29, 2010).

proposed tariff revision would require customers to waive remedies that would otherwise be statutorily available.

32. Second, the proposed liability waiver applies to every potential cause of action, regardless of the Company's degree of culpability. It thus far exceeds, in scope, the liability waivers at issue in the authorities it cites. For example, as noted above, the Washington Court of Appeals held that (with reference to liability limitations for errors or omissions in telephone directory listings): "jurisdictions have enforced such limitations and disclaimers of liability, whether contained in a filed tariff or a private contract, *unless the company's negligence is willful or gross.*"⁴⁶
33. Indeed, none of the authorities cited by PacifiCorp involve a liability limitation being applied to relieve a utility of its grossly negligent (or worse) activity. PacifiCorp's proposed limitation of liability contains no such exception, however. If approved, it will immunize PacifiCorp against liability for its unlawful acts, whether negligent, grossly negligent, reckless, or willful.
34. This is not an oversight on the Company's fault; it is the point. PacifiCorp's main pitch to the Commission is that the tariff revision is necessary due to recent jury verdicts finding it liable for damages caused by wildfires, which have negatively impacted its financial health. PacifiCorp highlights two such verdicts in particular, both entered in Oregon last year, one finding the Company liable for \$90 million in damages, and the other for \$62 million.⁴⁷ PacifiCorp suggests

⁴⁶ *Allen*, 20 Wn. App. at 149 (emphasis added).

⁴⁷ Brief ¶ 7.

that these awards are unreasonable and disproportionate, but neglects to inform the Commission that the jury found PacifiCorp’s conduct “grossly negligent, reckless and willful.”⁴⁸

35. There is nothing just or reasonable about making consumers bear the consequences of PacifiCorp’ grossly negligent, reckless, and willfully unlawful behavior. Indeed, PacifiCorp unobviously attempts to place the Commission on the horns of a dilemma by asserting that unless the Commission approves the tariff forcing injured customers to forego their right to be made whole, it will have to seek “dramatic rate increases”.⁴⁹ Either way, PacifiCorp suggests, its customers will need to bear the loss. In fact, there is a third option: the Company itself and its shareholders can accept the financial responsibility of restoring the Company to full profitability. In any event, the Company is not presently before the Commission seeking to raise its rates. Nor, it should be noted, does PacifiCorp represent that it will not seek to raise its rates even if the proposed limitation of liability is approved, describing the tariff revision as merely “another mechanism to support the Company’s financial health.”⁵⁰

36. Finally, even taking PacifiCorp at its word that it faces financial difficulty from wildfire litigation, the liability waiver it proposes is not limited to damages caused by wildfires. To the contrary, PacifiCorp’s proposed tariff revision would insulate it from damages negligently—or even willfully or intentionally—caused by its employees acting in the scope of their employment in any and all circumstances. Thus, for example, damages for bodily injury or wrongful death arising from an automobile accident would not be recoverable. PacifiCorp fails to explain why it

⁴⁸ See, Berkshire Hathaway Energy Company, *Form 10-K*, at 94 (cited in PacifiCorp’s Brief at 7, n.25) <https://bit.ly/3wyWQw6>.

⁴⁹ Brief ¶ 10.

⁵⁰ Brief ¶ 13.

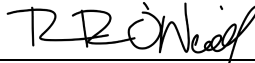
seeks an essentially unlimited liability waiver, when the only risk to its financial health it discusses arises from wildfire litigation.

IV. CONCLUSION

37. For the foregoing reasons, Public Counsel urges the Commission to deny PacifiCorp's petition.

DATED this 3rd day of May, 2024.

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