

October 24, 2023

VIA ELECTRONIC FILINGPublic Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398**Re: Advice No. 23-018—Rule 4—Application for Electrical Service**

Pursuant to Oregon Revised Statute 757.205 and Oregon Administrative Rule (OAR) 860-022-0025, PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) submits for filing the following modified tariff pages relating to PacifiCorp's General Rules and Regulations Application for Electrical Service (Rule 4). PacifiCorp respectfully requests an effective date of November 29, 2023.

Sheet	Schedule/Rule	Title
Second Revision to Sheet No. R4-2	Rule 4	General Rules and Regulations Application for Electrical Service
Original Sheet No. R4-3	Rule 4	General Rules and Regulations Application for Electrical Service

Rule 4 outlines PacifiCorp'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, noneconomic, 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(P).
- When two applicants apply for electricity service, they are jointly and severally liable, as opposed to either joint or several liability. Rule 4(A).
- The Company has no duty to inspect or repair customer lines, appliances, or apparatus, and assumes no liability for these actions. Rule 6(C).
- The Company's liability is limited under standard Force Majeure provisions. Rule 10(I).

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)).

- Regarding unauthorized reconnection/tampering, the person receiving service “shall be liable for any damage to Company property.” Rule 11B(II)(C).
- 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(III)(B).
- Customers assume all risks and liability for applicant built line extensions. Rule 13(V)(A)(2).
- There are various limitations on Company liability for various types of interrupted service. Rule 25 General Exceptions.
- The Company “shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering facility, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.” Oregon Schedule 135 Special Conditions 13.

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 atypical damage, 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 atypical 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.

Tariff changes and impacts

OAR 860-022-0025 requires that PacifiCorp submit a statement of the tariff schedule change, the number of customers affected, the change in revenue, and the grounds supporting the change. The proposed change will affect all customers but does not increase or decrease customer prices. As explained above, the proposed change is necessary to limit the Company's liability for non-economic damages, and aid in maintaining and improving its current credit rating for the benefit of customers.

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

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

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah St., Suite 2000
Portland, Oregon 97232

Please direct any informal questions about this filing to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,



Matthew McVee
Vice President, Regulatory Policy and Operations

Enclosures

Proposed Tariff Sheets

Application for Electric Service (continued)

- C. Contracts:** Contracts will not be required as a condition of service except:
1. As may be required by conditions set forth in the rate schedules or General Rules and Regulations of this tariff as approved by the Public Utility Commission of Oregon.
 2. In the case of electric extensions, temporary service, or service involving special conditions.
- D. Change of Consumer's Service or Equipment:** In the event that the Consumer shall make any material change either in the amount or character of the electric appliances, apparatus or equipment installed upon his premises to be supplied with electric energy by the Company, the Consumer shall give the Company prior written notice of this fact. If such change exceeds the capacity of the Company's existing facilities or is likely to cause impairment of service to other consumers, the Company may require the Consumer to enter into a line extension contract and pay any necessary advances before making the change.
- E. Impairment of Service to Other Consumers:** The Company reserves the right to refuse service to loads of a character that may seriously impair service to any other Consumers. In the case of hoist or elevator motors, welders, furnaces, compressors and other installations of like character, where the use of electricity is intermittent or subject to violent fluctuations, the Company may require the Consumer to provide at his own expense suitable equipment to reasonably limit such fluctuations.
- F. Change of Occupancy**
When a change of occupancy occurs, notice of such change must be given at the office of Company prior to the date of such change, or the outgoing Consumer will be held responsible for all service supplied at that location until such notice has been received by Company. The incoming Consumer must make application, qualify as a Consumer and agree to assume responsibility for the service billing, including contract minimums, from that date forward.
- G. No Consumer of Record:** Anyone taking electric service, for which an application has not been accepted and who is therefore not a Consumer, may have service discontinued without notice and shall be liable for charges, under the applicable schedule, for any service taken.
- H. Availability of Facilities:** The Company shall not be required to maintain facilities in place or to continue the availability of facilities installed for Consumer's service when: (a) facilities have not been utilized to provide service in accordance with an application for service for a period of fifteen (15) consecutive months; or (b) when such service is not furnished in accordance with contract provisions set forth in this Tariff.

(continued)

Application for Electric Service (continued)

- I. **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.

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