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December 28, 2023

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**Re: UE 428—PacifiCorp’s Partial Objection to Samuel Drevo’s Petition to Intervene**

PacifiCorp d/b/a Pacific Power respectfully submits for filing its partial objection to Samuel Drevo’s petition to intervene in Docket No. UE 428.

If you have questions about this filing, please contact Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew McVee".

Matthew McVee  
Vice President, Regulatory Policy and Operations

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 428**

In the Matter of

PACIFICORP, dba PACIFIC POWER

Advice No. 23-018 Rule 4 Application for  
Electrical Service

PacifiCorp’s Partial Objection to Samuel  
Drevo’s Petition to Intervene on Behalf of the  
Certified Class in *James v. PacifiCorp*

PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) respectfully requests the Utility Commission of Oregon (OPUC or Commission) partially deny Samuel Drevo’s Petition to Intervene in this proceeding.

If Mr. Drevo confirms he is a current customer of PacifiCorp and seeks to intervene on this basis, the Company would not object to Mr. Drevo’s individual intervention. However the Company objects to intervention on behalf of the *James* litigation class, as well as his intention to broaden the scope of the proceeding to address any issues from the 2020 wildfires or *James* litigation. Accordingly, PacifiCorp requests the Commission allow Mr. Drevo to intervene only as a current PacifiCorp customer (if applicable), and limit his intervention to address prospective issues raised by the Company’s proposed tariff language, issues that are unrelated to pending wildfire litigation.

**I. RELEVANT BACKGROUND**

In Advice No. 23-018, PacifiCorp submitted a modification to its Tariff Rule 4 to “limit damages arising out of the Company’s provision of electric services to actual

damages.”<sup>1</sup> In the Advice Letter, PacifiCorp made clear that the tariff would “only apply prospectively, and for actions arising out of the provision of electric service.”<sup>2</sup>

On December 18, 2023, Mr. Drevo sought to intervene in this proceeding “on behalf of himself and the class certified in the matter *James et al. v. PacifiCorp et al.*, No. 20CV33885 (Mult. Cnty. Cir. Ct., Alexander, J.)”<sup>3</sup> Drevo asserts that his interests individually, as well as those of the *James* class, are “substantially and directly affected by PacifiCorp’s proposed modifications,” that may affect claims for Mr. Drevo and other class members in the *James* litigation.<sup>4</sup> Mr. Drevo asserts that PacifiCorp’s tariff change “threatens my potential recovery of these categories of damages and the recovery of class members,”<sup>5</sup> and as a result, he intends to raise issues as appropriate, “including *James* class members’ entitlement to categories of damages under Oregon law.”<sup>6</sup> Nowhere in Mr. Drevo’s petition does he state whether he is a current customer of PacifiCorp who would actually be covered by the prospective changes to Tariff Rule 4, nor does he provide that information (or any information at all) regarding the class of litigants on whose behalf he seeks to intervene.

## II. STANDARD OF DECISION

The Commission may permit any person or organization to become a party to a contested case if their participation will not unreasonably broaden the issues, burden the record, or delay the proceedings.<sup>7</sup> If the Commission has concerns with a specific application for intervention, the Commission can take action to limit the scope of intervention to not

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<sup>1</sup> Advice No. 23-018 at 1 (Oct. 24, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> Drevo Pet. at 1.

<sup>4</sup> *Id.* ¶ 3.

<sup>5</sup> *Id.* ¶ 4.

<sup>6</sup> *Id.* ¶ 5.

<sup>7</sup> ORS 756.525(2); OAR 80-001-0300(6).

unreasonably broaden the issues of the proceeding or burden the record.<sup>8</sup> The Commission allows PacifiCorp to object to petitions to intervene if necessary.<sup>9</sup>

### III. ARGUMENT

Mr. Drevo seeks to intervene to defend against the potential retroactive application of the Company's revised Electric Service Rule 4 to facts, circumstances, or issues in the *James* litigation. However, Mr. Drevo's concerns are beyond the scope of this proceeding because the proposed tariff modification only applies prospectively and as a condition of taking service (i.e. it applies only to PacifiCorp's customers, a status that Mr. Drevo has not claimed as the basis of his intervention). The Commission should limit Mr. Drevo's intervention to himself as a current customer (if applicable), and consistent with the Company's request, define the scope of this proceeding to only consider prospective relief unrelated to pending wildfire litigation.

#### A. Mr. Drevo seeks to unreasonably broaden the scope of this proceeding.

Mr. Drevo does not indicate whether he is a current PacifiCorp customer. Instead, and despite the express statement that the proposed change to Rule 4 would apply prospectively and only to PacifiCorp customers, Mr. Drevo raises an extreme position: That the Company's 2023 Advice filing could somehow impact the *James* litigation—proceedings that involve litigants (some of whom are not PacifiCorp customers), and facts and circumstances from wildfires that occurred several years before in 2020.

Mr. Drevo's interest in intervening would unreasonably broaden the scope of this proceeding. The Company filed its tariff filing on October 24, 2023. The 2020 wildfires that

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<sup>8</sup> ORS 756.525(2).

<sup>9</sup> OAR 860-001-300(5).

resulted in the *James* litigation occurred several years prior. The Company has not asked for any retroactive amendment to Rule 4 or any retroactive application of any amendment.

On top of that, even if the Company had asked for anything other than prospective application, the legal impact of this proceeding (if any) on the *James* litigation is a matter for the Court presiding over that case to determine, not for this Commission. The Commission is not in a place to make rulings directly relating to ongoing litigation and that is not within the scope of the Commission’s statutory authority.

Accordingly, Mr. Drevo’s petition seeks to unreasonably broaden the scope of this proceeding to the extent it seeks to address any retroactive application of the Company’s request.<sup>10</sup>

**B. The *James* class lacks a substantial and direct interest in this proceeding.**

The Company does not object to Mr. Drevo appearing individually in this proceeding if he can demonstrate his interest as a current customer of PacifiCorp.

However the Company objects to Mr. Drevo’s appearance on behalf of other class members from the *James* litigation, because this class lacks a substantial and direct interest in this proceeding. PacifiCorp unequivocally represents that its proposed amendment to Electric Service Rule 4 cannot threaten Mr. Drevo or other class members’ potential recovery from issues related to the *James* litigation, because the Company’s request only seeks prospective relief.<sup>11</sup> As a result, the entire *James* class have neither a substantial nor direct interest in this proceeding: Their interests as a certified class under Oregon Rule of Civil Procedure 32 to a pre-existing civil lawsuit cannot be implicated by the Company’s proposed tariff language

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<sup>10</sup> Advice 23-018, at 1 (“The proposed tariff amendment would . . . only apply prospectively . . .”).

<sup>11</sup> Advice 23-018, at 1 (“The proposed tariff amendment would . . . only apply prospectively . . .”).

that only seeks prospective relief, and that was filed several years after the *James* litigation began.

This conclusion would be consistent with previous Commission precedent that construed purported class member intervention to only individual appearances.<sup>12</sup> And it would more faithfully adhere to the Commission’s rules that limit intervention to either persons or organizations: it is unclear how the *James* class is an “organization” under OAR 860-001-300(2)(c), when this class is a judicial creation that is specific to one civil lawsuit. While current PacifiCorp customers who are part of the *James* class could individually intervene like Mr. Drevo, the class itself lacks a substantial and direct interest in this proceeding.

Even if the Commission were to construe a litigation class as an organization, under OAR 860-001-300(2)(c), an organization seeking to intervene must state “the number of members in and the purpose of the organization.” This information is missing from Mr. Drevo’s petition. The Commission should not consider Mr. Drevo’s intervention on behalf of class members from the *James* litigation without full disclosure of all class members to the *James* litigation. There are two reasons for this request. First, the class may include members who are not current PacifiCorp customers and to whom the modification to Rule 4 would not apply. Second, the Commission rules requiring organizational membership disclosure ensure that PacifiCorp’s right to know who is participating in any given proceeding is protected. To this end, before the Commission grants Mr. Drevo’s intervention as to the class members of

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<sup>12</sup> *In re PGE Investigation into Least Cost Plan Plant Retirement*, Dockets DR 10, UE 88, UE 989, Order No. 05-091 n. 3 (Feb, 11, 2005) (“Although intervenors, Morgan, Gearhart and Kafoury Brothers, LLC, refer to themselves as “Class Action Plaintiffs,” they intervened on behalf of themselves and do not represent any class in these remand proceedings. Their identification as class action plaintiffs apparently refers to their status in a civil action suit.”).

the *James* litigation, the Commission should compel disclosure of all class members in the *James* litigation.

**C. The scope of Mr. Drevo’s intervention should be clearly defined.**

Beyond the unreasonableness of Mr. Drevo’s scope of intervention, the Company has concerns regarding the potential abuse of this proceeding to further litigation efforts in ongoing wildfire litigation. Absent clarification of the scope of issues in this case, PacifiCorp expects that substantial Commission and party resources will needlessly be expended litigating issues the Commission should not, or could not, appropriately consider in this case: primarily whether—if at all—the Company’s current application relates to the *James* litigation or any other pending wildfire litigation. This risk of unnecessary (or duplicative) use of party resources is underscored by the fact that parties that more routinely represent customer interests in Commission proceedings have already intervened, and can adequately and comprehensively represent the various customer interests in this proceeding.

To address these risks, the Company requests the Commission limit the scope of this proceeding (including Mr. Drevo’s individual intervention), to the relief requested in PacifiCorp’s filing: prospective application of the proposed language in Electric Service Rule 4 to PacifiCorp customers, and specifically exclude any issues related to pending wildfire litigation.<sup>13</sup>

**IV. CONCLUSION**

PacifiCorp respectfully requests the Commission permit Mr. Drevo to intervene only in his status as a current PacifiCorp customer, if applicable. The Commission should deny Mr. Drevo’s petition to intervene on behalf of the *James* class, and grant Mr. Drevo’s

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<sup>13</sup> Advice 23-018, at 1 (“The proposed tariff amendment would . . . only apply prospectively . . .”).

individual petition to intervene subject to the condition that this docket only considers prospective relief, and will not address any discrete issues raised in the *James* litigation or other pending wildfire litigation.

Respectfully submitted December 28, 2023

/s/ Zachary Rogala  
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