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February 27, 2024

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PACIFICORP, dba PACIFIC POWER,
Advice No. 23-018 (ADV 1545), Modifications to Rule 4,
Application for Electrical Service.
Docket No. UE 428

Dear Filing Center:

Please find enclosed the Alliance of Western Energy Consumers' Opening Brief in the above-referenced docket.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 428

In the Matter of)
)
PACIFICORP, dba PACIFIC POWER,)
)
Advice No. 23-018 (ADV 1545),)
Modifications to Rule 4, Application for)
Electrical Service.)

OPENING BRIEF OF THE ALLIANCE
OF WESTERN ENERGY CONSUMERS

Pursuant to the *Prehearing Conference Memorandum* issued by Administrative Law Judge (“ALJ”) Mapes in the above-captioned proceeding on December 20, 2023, and the *Ruling* issued by ALJ Mapes on February 16, 2024, the Alliance of Western Energy Consumers (“AWEC”) hereby submits this Phase 1 Opening Brief regarding PacifiCorp’s Advice No. 23-108 – Rule 4 – Application for Electrical Service (“Application”).

I. BACKGROUND

On October 24, 2023, PacifiCorp d/b/a Pacific Power (“PacifiCorp” or “Company”) filed the Application, seeking a modification to the Company’s General Rules and Regulations Application for Electrical Service (Rule 4). Specifically, PacifiCorp proposed to modify Rule 4 to:

- (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.¹

¹ Advice No. 23-018 at 1.

By way of a *Scoping Memorandum* issued December 1, 2023, ALJ Mapes detailed the Commission’s intent to solicit legal briefing in Phase 1 of this Proceeding addressing the following issues:

1. What is the Commission’s authority under Oregon law to adopt limitations on liability?
 - a. What, if any, boundaries exist on that authority?
 - b. Has the Commission already adopted relevant limitations on liability? How are those similar and different to those asked for here?
2. To what extent have other jurisdictions adopted limitations on liability similar to those asked for here? Have other jurisdictions considered and rejected limitations on liability similar to those asked for here?
3. Does any existing Oregon law limit or otherwise address PacifiCorp’s liability in ways that overlap with its request here?
4. Are there additional threshold legal issues the Commission should consider before turning to factual and policy issues?²

On December 23, 2023, PacifiCorp filed its Opening Brief, addressing select issues identified in the *Scoping Memorandum*.

II. DISCUSSION

At the present time, AWEC has no response to the legal positions contained within PacifiCorp’s Initial Brief (“Initial Brief”). While AWEC is not necessarily convinced of the accuracy of the legal arguments presented in the Initial Brief, AWEC anticipates additional

² Scoping Memorandum (Dec. 1, 2023).

intervenors will present detailed and cogent legal arguments addressing the Commission's specifically identified issues, outlined above. Accordingly, AWEC does not take a position on the legality of the requested modifications to Rule 4, nor the Commission's authority to approve such modifications. AWEC does specifically retain its right to respond, by way of Cross-Answering Brief, to any legal arguments presented by any and all intervenors in Opening Briefs.

Should the Commission determine it has the authority to restrict ratepayers' legal remedies as a condition of receiving electric utility service from PacifiCorp, and that any such limitation is not in conflict with existing Oregon law, then AWEC does take this opportunity to encourage the Commission to determine if establishing such a limitation will in fact benefit ratepayers by reducing PacifiCorp's costs of providing electric utility services. Indeed, given the scope and geographic distribution of PacifiCorp's system, and the fact that the proposed limitation would apply only to PacifiCorp customers, AWEC submits that the Commission should determine if the proposed limitation would, in fact, "better enable[] the Company to finance expenditures at reasonable costs"³ and "maintain an investment grade credit rating to minimize its costs of capital and access to debt markets."⁴ At the moment, this proceeding lacks an evidentiary basis to support PacifiCorp's claims. If customers as a whole will not benefit from the liability restrictions PacifiCorp proposes in the form of lower rates, then AWEC sees no reason to approve the tariff changes. In other words, AWEC views this proceeding as involving a two-part inquiry: (a) are PacifiCorp's tariff revisions lawful; and (b) if so, do they benefit customers? Only if the Commission can answer both questions in the affirmative should it approve PacifiCorp's tariff revisions.

³ Advice 23-018 at 3.

⁴ *Id.*

III. CONCLUSION

AWEC appreciates the opportunity to provide argument to the Commission on the issues identified in the *Scoping Memorandum* and respects the Commission's goal of receiving feedback on those issues. AWEC looks forward to reviewing legal discussions presented by other intervenor parties on the specific issues identified by the Commission and anticipates responding to such advocacy, where appropriate and beneficial.

Dated this 27th day of February, 2024.

Respectfully submitted,

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