

**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.

RULING

DISPOSITION: PETITION TO INTERVENE GRANTED

On December 18, 2023, Samuel Drevo petitioned 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.). Subsequently, PacifiCorp, dba Pacific Power, partially opposed Mr. Drevo's petition to intervene. PacifiCorp stated that it did not object to Mr. Drevo's petition on his own behalf to the extent he is a customer of PacifiCorp, but that it did object to intervention to the class as a whole. Finally, on January 11, 2024, Mr. Drevo responded to PacifiCorp's opposition, stating that the class as a whole has a potential interest in the outcome of this proceeding.

The Commission will allow intervention if "the petitioner has sufficient interest in the proceedings and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or delay the proceedings."¹ Here, Mr. Drevo argues that the class as a whole has an interest in the proceedings because each member of the class has a judgment against PacifiCorp for liability arising out of the 2020 wildfires that are the subject of the *James* litigation. PacifiCorp, on the other hand, argues that only class members who are customers of PacifiCorp have an interest in this proceeding because the tariff at issue axiomatically only applies prospectively and to customers of the company. Accordingly, the company asserts "Service Rule 4 cannot threaten Mr. Drevo or other class members' potential recovery from issues related to the *James* litigation."²

However, Mr. Drevo points out that PacifiCorp was not so definitive in its response to a discovery request in the *James* litigation, where it stated that "the information known or readily obtainable is insufficient to enable Defendant to admit or deny whether any tariff amendments, if permitted by the Public Utility Commission, would have any effect as to James class members."³ Mr. Drevo notes that only 17 members of the class currently have monetary judgments; liability has been established as to the rest, but not the amount of judgment. This raises the specter that PacifiCorp could argue that the tariff applies to

¹ OAR 860-001-0300(6)

² PacifiCorp Partial Objection to Intervention at 4.

³ Drevo Reply at 4.

those members of the class who are customers (or who become customers at a time in the future) who do not yet have a monetary judgment. It could also apply to class members should the *James* verdict be overturned on appeal and be remanded for further proceedings after the new tariff is (hypothetically) in effect.

These outcomes might not be likely, but the Commission has never required demonstration of certain harm to allow intervention in its proceedings. Accordingly, I find that Mr. Drevo and the class have a valid and sufficient interest in this proceeding.

PacifiCorp next argues that the class is not a valid organization under OAR 860-001-0300(2)(c) and that it does not state the number of members in the organization or its purpose, as required by that rule. PacifiCorp's reading of the intervention rules is overly formalistic. The rules do not mandate the form an organization must take or require that it be incorporated or otherwise formalized in any particular way. The class in a class action lawsuit has been certified by a court of law as an entity and can reasonably participate in court proceedings; nothing in our rules prohibits us from making the same determination. I find that the certification of the class for participation in the lawsuit, by the Multnomah County Circuit Court, gives us sufficient notice of its purpose. As for the number of members in the class, Mr. Drevo states that it is in the "thousands," which is sufficient information to facilitate the class's participation in this proceeding.⁴

While PacifiCorp is correct that some members of the class are likely not PacifiCorp customers, this is not sufficient reason to deny the class's intervention and, again, is overly formalistic. It is clear that many members of the class are certainly PacifiCorp customers (such as Mr. Drevo himself, through his business), and it is equally clear that members of the class may move into or out of PacifiCorp's service territory during the pendency of this proceeding and the *James* litigation. I note that intervention is routinely granted to organizations and entities that represent in whole or part the views of individuals not customers of the utility for which the docket directly concerns. While the precise status of any individual customer might ultimately matter when it comes time to apply the tariff, it does not change the general interest of the class as a whole in the outcome of this proceeding.

Accordingly, Mr. Drevo's petition to intervene on behalf of himself and the class in *James et al. v. PacifiCorp et al.* is granted.

Dated this 12th day of January, 2024 at Salem, Oregon.



Katharine Mapes
Administrative Law Judge

Attachment: Notice of Contested Case Rights and Procedures

⁴ Similarly, the Commission does not require, say, the Sierra Club to list the number of its members with specificity when intervening in its proceedings.

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at <https://www.oregon.gov/puc/Pages/default.aspx>. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Notice to Active Duty Servicemembers: Active Duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Notice of Contested Case Rights and Procedures continued

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.