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October 24, 2023

VIA ELECTRONIC DELIVERY

Jan Noriyuki
Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd
Building 8 Suite 201A
Boise, ID 83714

**RE: COMPLIANCE FILING IN CASE NO. PAC-E-23-22
IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR
AUTHORITY TO REVISE ELECTRIC SERVICE REGULATION NO. 3 – ELECTRIC
SERVICE AGREEMENTS**

Attention: Jan Noriyuki

Rocky Mountain Power hereby respectfully submits for filing with the Idaho Public Utilities Commission its Application in the above-referenced matter requesting authority to revise Electric Service Regulation No. 3 – Electric Service Agreements.

Informal questions related to this matter may be directed to Mark Alder, Idaho Regulatory Manager at (801) 220-2313.

Very truly yours,

A handwritten signature in blue ink that reads "Joelle Steward".

Joelle Steward
Senior Vice President, Regulation and Customer & Community Solutions

Enclosures

Joe Dallas (ISB# 10330)
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Attorneys for Rocky Mountain Power

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR AUTHORITY TO REVISE ELECTRIC SERVICE REGULATION NO. 3 – ELECTRIC SERVICE AGREEMENTS	CASE NO. PAC-E-23-22 APPLICATION
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Rocky Mountain Power, a division of PacifiCorp (“Company” or “Rocky Mountain Power”), respectfully requests the Idaho Public Utilities Commission (the “Commission”), approve the Company’s proposed amendment to Electric Service Regulation No. 3 – Electric Service Agreements (“Rule 3”), to update the Rule regarding liability for non-economic damages. Attachment 1 to this Application contains a clean and legislative copy of Regulation No. 3 with the proposed revisions.

In support of this Application, the Company states as follows:

1. The Company provides electric service to retail customers through its Rocky Mountain Power division in the states of Idaho, Utah, and Wyoming. Rocky Mountain Power is a public utility in the state of Idaho and is subject to the Commission's jurisdiction with respect to its prices and terms of electric service to retail customers in Idaho pursuant to Idaho Code § 61-129. Rocky Mountain Power is authorized to do business in the state of Idaho and serves approximately 89,365 retail electric service customers in the state.

2. This Application is filed pursuant to Commission Procedural Rule 52 and Idaho Code § 61-303, 61-307 and 61-622. Commission Procedural Rule 52 provides for an application for a pleading requesting authority. Idaho Code § 61-307 and 61-622 require a showing before the Commission that any change to a tariff is justified approval prior to its effective date and § 61-303 requires Idaho rules and regulations to be just and reasonable.

3. Rule 3 defines the Company's general rules and regulations for electric service. The proposed tariff amendment would update provisions regarding liability for non-economic damages. Specifically, the proposed amendment would: (1) limit damages arising out of the Company's provision of electric services to actual damages; (2) exclude atypical 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.

4. 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 Wyoming,¹ Washington,² and California,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

5. To that end, PacifiCorp’s tariffs include several Commission-approved limitations of liability. For example:

- There are various limitations on Company liability for various types of interrupted service (Rule 4(3)), including typical Force Majeure provisions.
- Regarding customer installations, the customer “shall be liable for any damage or injury resulting from using another power source” (Rule 5(2)(d)), the Company’s liability “shall cease at the Point of Delivery” (Rule 5(4)), and the Company “shall not be held

¹ 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>).

² 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).

³ *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).

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)).

liable for any loss or damage” that results from defects of Customer’s installation of equipment, nor from the use of those services on Customer premises (Rule 5(5)).

- Master-metered general service Customers indemnify the Company for “any and all liabilities, actions or claims for injury, loss or damage to persons or property arising from the allocation of service by the Customer.” Rule 7(4)(b).
- Customers assume all risks and liability for applicant-built extensions. Rule 12(5)(a)(2).
- The Company is not 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 that cause loss or injury, including death, to Customer or any third party.” Tariff 135, Special Condition 10; Tariff 136 Special Condition 9.

6. 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 damages, 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.

7. 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.

8. 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 a-typical 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.

COMMUNICATIONS

9. Communications regarding this filing should be addressed to:

Mark Alder
Idaho Regulatory Affairs Manager
Rocky Mountain Power
1407 West North Temple, Suite 330
Salt Lake City, Utah 84116
Telephone: (801) 220-2313
Email: mark.alder@pacificorp.com

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825 NE Multnomah, Suite 2000
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10. Informal questions may be directed to Mark Alder, Idaho Regulatory Affairs Manager at (801) 220-2313, and Rocky Mountain Power requests that all data requests regarding this Application be sent in Microsoft Word to the following:

By email (preferred): datarequest@pacificorp.com

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

MODIFIED PROCEDURE

11. Rocky Mountain Power believes that a hearing is not necessary to consider the issues presented, and respectfully requests that this Application be processed under Modified Procedure; i.e., by written submissions rather than by hearing, RP 201. If, however, the Commission determines that a technical hearing is required, the Company stands ready to prepare and present testimony in such hearing.

REQUEST FOR RELIEF

12. Rocky Mountain Power respectfully requests that the Commission approve the Company's proposed amendment to Rule 3.

DATED this 24th day of October, 2023.

Respectfully submitted,

ROCKY MOUNTAIN POWER



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Portland, OR 97232
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Email: joseph.dallas@pacificorp.com

Attorney for Rocky Mountain Power

ATTACHMENT 1

Proposed Tariff Changes

I.P.U.C. No. 1

7. CONTINUING SERVICE

Except as specifically provided otherwise, the rates of this tariff are based on continuing service at each service location. Disconnect and reconnect transactions shall not operate to relieve a customer from minimum monthly charges except as may be provided in seasonal service agreements between the customer and the Company.

8. AVAILABILITY OF FACILITIES

Company shall not be required to maintain facilities in place or to continue the availability of facilities installed for the Customer's service when: (a) facilities are not being utilized to provide service in accordance with an application for service; or (b) no contract providing for continuing availability at a stated capacity is in effect. Such facilities that have not been used during the last 12 months may be subject to removal. Decision to remove said facilities shall be at Company's sole discretion, but only after providing written notice to the last customer of record and owner of the property served, giving them a reasonable opportunity to respond. The decision for such removal shall be based on but not limited to (1) revenue potential of facilities, (2) safety hazards, (3) availability of workforce and (4) length of time facilities are expected to remain idle.

9. 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.

7. CONTINUING SERVICE

Except as specifically provided otherwise, the rates of this tariff are based on continuing service at each service location. Disconnect and reconnect transactions shall not operate to relieve a customer from minimum monthly charges except as may be provided in seasonal service agreements between the customer and the Company.

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