



651 Commerce Drive  
Roseville, CA 95678

phone (916) 781-3636  
fax (916) 783-7693  
web www.ncpa.com

## Agenda – Legal Committee Meeting

**Meeting Date:** February 1, 2024 Legal Committee Meeting

**Location:** Meeting held at NCPA Headquarters and via Teleconference Posted Locations

**Time:** 9:00 a.m. PT

In compliance with the Brown Act, you may participate in person at the meeting location or via teleconference at one of the locations listed below. In either case, please (1) post the Agenda at a publicly accessible location at the participation location at least 72-hours before the meeting begins, and (2) have a speaker phone available for any member of the public who may wish to attend at your location.

<p><b>Northern California Power Agency</b> 651 Commerce Drive Roseville, CA 95678</p>	<p><b>City of Alameda</b> Alameda City Attorney's Office 2263 Santa Clara Avenue, No. 280 Alameda, CA 94501</p>	<p><b>San Francisco Bay Area Rapid Transit District</b> 2150 Webster Street, 1<sup>st</sup> Floor, Room 161 Oakland, CA 94612</p>
<p><b>City of Biggs</b> Law Office of Gregory P. Einhorn 542 Quail Walk Way Rio Vista, CA 94571</p>	<p><b>City of Alameda</b> 18217 Carmel Drive Castro Valley, CA 94546</p>	<p><b>City of Gridley</b> Rich, Fuidge, Bordsen &amp; Galyean 1129 D Street Marysville, CA 95901</p>
<p><b>City of Lodi</b> 221 West Pine Street Lodi, CA 95240</p>	<p><b>City of Healdsburg</b> Burke Williams &amp; Sorenson 5625 White Mountain Court Martinez, CA 94553</p>	<p><b>Plumas-Sierra Rural Electric Coop</b> Somach, Simmons &amp; Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814</p>
<p><b>City of Lompoc</b> Aleshire &amp; Wynder, LLP 6001 Boeing Place Los Angeles, CA 90045</p>	<p><b>City of Palo Alto</b> Office of the City Attorney Office 250 Hamilton Avenue Palo Alto, CA 94301</p>	<p><b>Port of Oakland</b> Office of General Counsel 530 Water Street Oakland, CA 94607</p>
<p><b>City of Redding</b> Office of the City Attorney 777 Cypress Avenue Redding, CA 96001</p>	<p><b>City of Palo Alto</b> Assistant City Attorney Office 54 Bosworth Field Mendon, NY 14506</p>	<p><b>City of Santa Clara</b> 881 Martin Avenue Santa Clara, CA 95050</p>
<p><b>City of Roseville</b> Civic Center-City Attorney's Office 311 Vernon Street Roseville, CA 95678</p>	<p><b>City of Shasta Lake</b> [No teleconference location]</p>	<p><b>Truckee Donner PUD</b> [No teleconference location]</p>
<p><b>City of Ukiah</b> Rappport and Marston 405 West Perkins Street Ukiah, CA 95482</p>	<p><b>City of Alameda</b> 10572 Avenida Magnifica San Diego, CA 92131</p>	

Persons requiring accommodations in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at 916-781-3636 in advance of the meeting to arrange for such accommodations.

The Committee may act on any of the items listed on this Agenda regardless of whether an item is described as an Action item, a Report, or an Informational or Discussion item. This Agenda may be supplemented by Staff Reports which are available to the public upon request. Pursuant to California Government Code Section 54957.5, the following is the location at which the public can view Agendas and other public writings: NCPA Offices, 651 Commerce Drive, Roseville, California, or [www.ncpa.com](http://www.ncpa.com).

- **Review Safety Procedures – NCPA Headquarters Facility**

- 1. CALL MEETING TO ORDER AND ROLL CALL**

- 2. PUBLIC COMMENT**

Any member of the public who desires to address the NCPA Legal Committee on any item considered by the Legal Committee at this meeting, before or during the Committee's consideration of that item, shall so advise the Chair and shall thereupon be given an opportunity to do so. Any member of the public who desires to address the NCPA Legal Committee on any item within the jurisdiction of the Legal Committee and not listed on the Agenda may do so at this time.

- 3. MEETING MINUTES** - Seeking approval of the minutes of the Legal Committee meeting held on November 2, 2023 (*Action Item*)

**CLOSED SESSION**

- 4. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Pursuant to Government Code Section 54956.9(d)(2) – Anticipated Litigation, one (1) case.

**OPEN SESSION**

- 5. REPORT FROM CLOSED SESSION**

- 6. PACIFICORP UPDATED WILDFIRE LIABILITY LANGUAGE** - Discuss liability language and most recent changes PacificCorp made to its Wildfire Mitigation Plan in October 2023 (*Information/Discussion Item*)

- 7. COMBUSTION TURBINE 2 REPLACEMENT PROJECT** – Staff will provide update on the Project and Second Phase Agreement. (*Information/Discussion Item*)

- 8. LODI ENERGY CENTER HYDROGEN PROJECT** – Staff will provide an update on the Project and the Second Phase Agreement. (*Information/Discussion Item*)

- 9. GRACE SOLAR PROJECT** – Staff will provide an update on the Project and discuss a Third Phase Agreement. (*Information/Discussion Item*)

**10. GENERAL COUNSEL UPDATES** - NCPA's General Counsel will update the Committee on miscellaneous business matters of interest. *(Information Item)*

**11. ADJOURNMENT**

2/1/2024  
Item 3.



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Roseville, CA 95678

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# NCPA Legal Committee Meeting Minutes

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**Date:** Thursday, November 2, 2023  
**Time:** 8:30 a.m. Pacific Standard Time  
**Location:** 651 Commerce Drive, Roseville, CA or via teleconference  
**Subject:** NCPA Legal Committee Regular Meeting

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## 1. Call Meeting to Order and Roll Call

The Legal Committee meeting was called to order at 8:30 a.m. by Chair Barry DeWalt. At the time of roll call, the following members were present via Zoom:

Alameda Municipal Power-Lonnie Eldridge; BART-Mary Wilke; Biggs-Gregory Einhorn; Lodi-Katie Lucchesi; Lompoc-Joe Pannone; Palo Alto-Amy Bartell, Redding-Barry DeWalt; Roseville-Joe Mandell, Santa Clara-Daniel Ballin, and Ukiah-David Rapport. A quorum was present.

Also participating in the meeting were Darcy Vaughn of Ukiah, NCPA General Manager Randy Howard, NCPA General Counsel Jane Luckhardt, and NCPA administrative support Linda Stone.

Rachel Sommovilla of the Port of Oakland joined the meeting at 8:35 a.m.

## 2. Public Comment

The Chair read the notification regarding Public Comment and asked if any member of the public would like to address the Committee. There was no public comment.

## 3. Meeting Minutes

The minutes of the September 7, 2023, regular meeting and the October 4, 2023, annual meeting were presented by staff for review and approval. Joe Pannone noted that Lompoc was not present at the October 4<sup>th</sup> annual meeting. With that revision, Barry DeWalt (Redding) made a motion to approve both minutes; seconded by Joe Mandell (Roseville). There was no discussion. A roll call vote was taken, as follows. The motion passed.

<b>Vote Summary on Motion</b>	
<b>Participant</b>	<b>Vote</b>
Alameda Municipal Power	Yes
BART	Yes
Biggs	Yes
Gridley	Absent
Healdsburg	Absent
Lodi	Yes
Lompoc	Yes
Palo Alto	Yes
Plumas-Sierra	Yes
Port of Oakland	Absent
Redding	Yes
Roseville	Yes
Santa Clara	Yes
Shasta Lake	Absent
Truckee Donner PUD	Absent
Ukiah	Yes
<b>Vote Summary</b>	
Total Yes	11
Total Noes	0
Total Abstain	0
Total Absent	5
<b>Result:</b>	<b>Motion Passed</b>

**CLOSED SESSION**

The Committee went into Closed Session at 8:36 a.m.

**4. Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(d)(1).**

A. Case Name: *City of Santa Clara dba Silicon Valley Power and Northern California Power Agency, Plaintiffs, v. California Department of Water Resources, Defendant, Sacramento County Superior Court, Case No. 34-2023-00338449*

B. FERC Dockets: Rate Cases:

**FERC TO18:**

- *Pacific Gas and Electric Co., Federal Energy Regulatory Commission, Docket No. ER16-2320*
- *Pacific Gas and Electric Co., Federal Energy Regulatory Commission, Docket No. EL18-108*

#### **FERC TO19:**

- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER17-2154
- *California Public Utilities Commission, et al. v. Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. EL17-95

#### **FERC TO20:**

- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER19-13
- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER19-1816
- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER20-2265

#### **D.C. Circuit:**

- *Pacific Gas and Electric Co. v. Federal Energy Regulatory Commission*, D.C. Circuit Case No. 21-1061 (lead), consolidated with Case Nos. 21-1135, 21-1172, 21-1204, 22-1095, 22-1113.

- 5. Conference with Legal Counsel** – Anticipated Litigation pursuant to Government Code Section 54956.9(d)(2) – one (1) case.

The meeting reconvened to Open Session at 8:59 a.m.

- 6. Report from Closed Session**

Chair Barry DeWalt and NCPA General Counsel Jane Luckhardt advised that no reportable action was taken during Closed Session.

- 7. Second Phase Agreement – Combustion Turbine 2 Replacement Project.**

Jane Luckhardt discussed the status of this project and noted that review and revisions of the Second Phase Agreement are underway. Lodi and Lompoc are interested in the project, Alameda does not want to participate, and Roseville is considering participation. Joe Mandell said he reviewed the redlines in the current draft of the agreement and has no concerns from a legal standpoint. Roseville has other things to consider and expects to know in the next month or so whether it wants to participate. Joe also said Santa Clara may be interested. Dan Ballin said he appreciates the heads up. Some further edits to the Second Phase Agreement footers were identified. NCPA will send out the Word version of the agreement.

- 8. NCPA Program to Address Wheeling Access Charges-Transmission Owner Rate Cases.**

Jane Luckhardt presented a PowerPoint prepared by she and Tony Zimmer regarding the Transmission Rate Case Program being developed by NCPA. Since TANC's PA 6 Program, a focused effort to reduce the transmission owner charges collected by the CAISO through the transmission access charge and wheeling access charge, expires at the end of 2023, NCPA's Commission previously approved budget funds in FY2024 for legal and consulting services for participation and engagement in transmission owner rate cases at FERC.

NCPA issued a formal Request for Proposals for the Program's legal services. The firm of Duncan, Weinberg, Genzer & Pembroke, P.C. was selected. Going forward NCPA is seeking approval for execution of the contracts and contract amendments necessary to carry out the work, and bill members according to an approved cost split for funds actually incurred. A potential cost split by load ratio share was presented. The Program will be developed by NCPA staff and participating members, with a focus on scope, funding and cost allocation, and governance. NCPA expects it will take about a year to develop the Program. While NCPA puts the Program in place, it will create an ad hoc committee/participant group to provide periodic direction and focus on those things in which we want to participate and the level of funding. Randy Howard noted that to date in FY2024 NCPA has spent less than \$50,000. It was noted that people like the updates provided by TANC, and those updates will continue. Jane said that NCPA is looking for feedback, and this item will be discussed with the Utility Directors next week.

## **9. General Counsel Updates**

Jane Luckhardt advised the Committee about the Grace Solar Project being developed by NextEra Energy Resources Development. The project capacity is a 50 MW slice of the overall 400-500 MW project. Presently nine members have expressed interest, including Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Port of Oakland, Shasta Lake, and Santa Clara-SVP. She said the project is under a tight time frame with completion of the Project Participation Agreement to be completed within 90 days. Those interested will need to get approval from their governing bodies.

## **10. Adjournment.**

The meeting was adjourned at 9:29 a.m.

Respectfully submitted,

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Linda Stone

2/1/2024  
JPM 6.



825 NE Multnomah Street, Suite 2000  
Portland, Oregon 97232

October 24, 2023

**VIA ELECTRONIC FILING**

Public 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.

<u>Sheet</u>	<u>Schedule/Rule</u>	<u>Title</u>
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,<sup>1</sup> California,<sup>2</sup> and Wyoming,<sup>3</sup> to name a few. These examples highlight the general understanding that, to ensure reasonable rates (among other considerations),<sup>4</sup> limitations of liability provisions are an inherent part of the ratemaking process.<sup>5</sup>

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).

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<sup>1</sup> 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](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).

<sup>2</sup> *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).

<sup>3</sup> 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](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>).

<sup>4</sup> *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).

<sup>5</sup> *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.

Advice 23-018  
Public Utility Commission of Oregon  
October 24, 2023  
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**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](mailto: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

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**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.

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(continued)

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**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.

(N)

(N)