



KATHERINE MCDOWELL
Direct (503) 595-3924
katherine@mrg-law.com

December 8, 2022

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket UE 399 – In the Matter of PACIFICORP, dba PACIFIC POWER, Request for a General Rate Revision

Attention Filing Center:

Attached for filing in the above-referenced docket is the Stipulating Parties' Joint Post-Hearing Brief in Support of the Fourth Partial Stipulation.

Please contact this office with any questions.

Sincerely,

Katherine McDowell

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 399**

In the Matter of
PACIFICORP d/b/a PACIFIC POWER'S
Request for a General Rate Revision.

**JOINT POST-HEARING BRIEF IN SUPPORT OF FOURTH PARTIAL STIPULATION
OF
PACIFICORP, STAFF OF THE PUBLIC UTILITY COMMISSION OF OREGON, THE
OREGON CITIZENS' UTILITY BOARD, WALMART INC., VITESSE, LLC, AND THE
NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION**

December 8, 2022

Table of Contents

- I. INTRODUCTION 1
- II. PROCEDURAL BACKGROUND 2
- III. LEGAL STANDARD FOR STIPULATION APPROVAL 3
- IV. BACKGROUND AND LEGAL STANDARD FOR VRET APPROVAL 4
 - A. The Oregon State Legislature directed the Commission to consider VRETS..... 5
 - B. The Commission modified its VRET guidelines in response to PGE’s proposal and changed circumstances..... 7
 - C. HB 2021 is relevant to VRET consideration 9
- V. ARGUMENT..... 10
 - A. The ACT stipulation satisfies the Commission’s VRET conditions 10
 - 1. The proposed ACT satisfies Condition 1 11
 - 2. The proposed ACT satisfies Condition 2..... 11
 - 3. The proposed ACT satisfies Condition 3..... 12
 - 4. The proposed ACT satisfies Condition 4..... 12
 - 5. The proposed ACT satisfies Condition 5/6..... 13
 - 6. The proposed ACT satisfies Condition 7..... 14
 - 7. The proposed ACT satisfies Condition 8..... 15
 - 8. The proposed ACT satisfies Condition 9..... 15
 - B. The ACT responds to customer demand for emission-free generation without adversely impacting non-participating customers. 15
 - 1. The ACT is supported by a broad array of stakeholders and reflects a reasonable compromise of competing interests. 16
 - 2. The ACT includes critical protections for participating and non-participating customers..... 16
 - 3. The ACT is consistent with the Commission’s competitive bidding rules..... 17
 - C. NewSun’s objections are unnecessary and unreasonable. 18
 - 1. NewSun’s recommendations improperly dictate ACT PPA terms..... 19
 - 2. The ACT does not require termination in the event of a default. 20
 - 3. PacifiCorp must be able to negotiate reasonable terms to address under-delivery. 22
 - 4. NewSun unreasonably relies on short-term trading agreements to dictate long-term PPA terms..... 23
 - 5. The ACT contains sufficient protections for participating customers when providing replacement resources. 24

6. PacifiCorp will not own any ACT resources without seeking Commission approval..... 25

7. PGE’s Schedule 55 is not a reasonable alternative to the ACT..... 26

VI. CONCLUSION 27

TABLE OF AUTHORITIES

	Page(s)
Public Utility Commission of Oregon Decisions	
<i>In re NW Natural, Request for a General Rate Revision,</i> Docket No. UG 435, Order No. 22-388 (Oct. 24, 2022)	4
<i>In re PacifiCorp, dba Pacific Power, 2010 Transition Adjustment Mechanism,</i> Docket No. UE 207, Order No. 09-432 (Oct. 30, 2009).....	1, 3, 4
<i>In re PacifiCorp, dba Pacific Power, Request for a General Rate Revision,</i> Docket No. UE 210, Order No. 10-022 (Jan. 26, 2010)	1, 3
<i>In re PacifiCorp, dba Pacific Power, Request for a General Rate Revision,</i> Docket No. UE 374, Order No. 20-473 (Dec. 18, 2020)	3
<i>In re PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out,</i> Docket No. UE 267, Order No. 15-060 (Feb. 24, 2015).....	3, 4
<i>In re Portland General Electric Company, 2005 Resource Valuation Mechanism,</i> Docket No. UE 161, Order No. 04-573 (Oct. 5, 2004).....	4
<i>In re Portland General Electric Company, Investigation into Proposed Green Tariff,</i> Docket No. UM 1953, Order No. 19-075 (Mar. 5, 2019).....	7
<i>In re Portland General Electric Company, Investigation into Proposed Green Tariff,</i> Docket No. UM 1953, Order No. 20-036 (Jan. 31, 2020)	7
<i>In re Portland General Electric Company, Investigation into Proposed Green Tariff,</i> Docket No. UM 1953, Order No. 21-091 (Mar. 29, 2021).....	<i>passim</i>
<i>In re Portland General Electric Company, Investigation into Proposed Green Tariff,</i> Docket No. UM 1953, Order No. 21-096 (Mar. 29, 2021).....	7
<i>In re Portland General Electric Company, Request for a General Rate Revision,</i> Docket No. UE 394, Order No. 22-129 (Apr. 25, 2022)	4
<i>In re Public Utility Commission of Oregon, Voluntary Renewable Energy Tariffs for Non-Residential Customers,</i> Docket No. UM 1690, Order No. 15-258 (Aug. 26, 2015).....	5

<i>In re Public Utility Commission of Oregon, Voluntary Renewable Energy Tariffs for Non-Residential Customers, Docket No. UM 1690, Order No. 15-405 (Dec. 15, 2015)</i>	6, 9
<i>In re Public Utility Commission of Oregon, Voluntary Renewable Energy Tariffs for Non-Residential Customers, Docket No. UM 1690, Order No. 16-251 (July 5, 2016)</i>	7
<i>In re Rulemaking Related to a New Load Direct Access Program, Docket No. AR 614, Order No. 18-341 (Sept. 14, 2018)</i>	13
Statutes	
ORS 469A.410.....	9
ORS 756.040.....	10
Other Authorities	
HB 4126, 2014 Reg. Sess., 77th Or. Leg. Assemb. (2014)	5, 6, 7
HB 2021, 2021 Reg. Sess., 81st Or. Leg. Assemb. (2021).....	4, 9

1 I. INTRODUCTION

2 PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company), Staff of the Public Utility
3 Commission of Oregon (Staff), the Oregon Citizens’ Utility Board (CUB), Walmart Inc.
4 (Walmart), Vitesse, LLC (Vitesse), and the Northwest & Intermountain Power Producers
5 Coalition (NIPPC) (together, the Stipulating Parties) hereby submit this Joint Post-Hearing Brief
6 in Support of the Fourth Partial Stipulation (Stipulation), which resolves all issues related to
7 PacifiCorp’s Accelerated Commitment Tariff (ACT) reflected in the proposed Schedule 273.

8 The Public Utility Commission of Oregon (Commission) should approve the Stipulation
9 without modification because it is fair, just, reasonable, in the public interest, and the result of a
10 robust negotiation process that brought together a broad array of stakeholders, including
11 participating customers, non-participating customers, and developers of electrical generation
12 facilities. The Stipulation represents a carefully crafted balance of competing interests that all
13 Stipulating Parties support as in the public interest. The Stipulation is supported by a robust
14 evidentiary record and is expected to create a viable voluntary renewable energy tariff (VRET)
15 that will allow customers to accelerate the decarbonization of their energy supply, consistent
16 with Oregon state energy policy and the Commission’s VRET conditions. The Stipulation
17 represents a meaningful compromise between the positions of formerly adverse parties, in
18 furtherance of the Commission’s policy to encourage voluntary resolution of issues “to the extent
19 that settlement is in the public interest.”¹ The Commission should therefore approve the
20 Stipulation as a “compromise of different positions” that represents “a reasonable resolution” of
21 the issues.²

¹ *In re PacifiCorp, dba Pacific Power, 2010 Transition Adjustment Mechanism*, Docket No. UE 207, Order No. 09-432 at 6 (Oct. 30, 2009).

² *In re PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 210, Order No. 10-022 at 5 (Jan. 26, 2010).

1 Walmart filed rebuttal testimony addressing the ACT, and PacifiCorp filed surrebuttal testimony
2 on August 26, 2022. The parties participated in settlement conferences on July 1, 2022, and July
3 28, 2022, and August 19, 2022, and ACT specific settlement conferences on August 24, 2022,
4 August 26, 2022, and August 31, 2022. As a result of these settlement conferences, the
5 Stipulating Parties reached an agreement that resolves all ACT-related issues raised in filed
6 testimony. The terms of the settlement are captured in the Stipulation. PacifiCorp filed the
7 Stipulation on September 30, 2022. The Stipulating Parties filed joint testimony in support of
8 the Stipulation on October 7, 2022.³

9 NewSun did not join the Stipulation. NewSun had not previously submitted any
10 testimony on the ACT. NewSun filed an objection to the Stipulation on October 21, 2022. The
11 Stipulating Parties filed joint response testimony on November 10, 2022, disagreeing with all of
12 NewSun’s proposed modifications to the Stipulation. The Commission held an evidentiary
13 hearing on November 18, 2022.

14 III. LEGAL STANDARD FOR STIPULATION APPROVAL

15 The Commission will approve stipulations that are supported by competent evidence in
16 the record and appropriately resolve the issues in a case.⁴ Settlements provide “value in terms of
17 administrative efficiency by narrowing the range of positions on issues and further developing
18 the record.”⁵ The Commission reviews “settlements to determine whether, on a holistic basis,

³ CUB and Vitesse each joined the joint testimony and additionally filed supplemental testimony in support of the Stipulation.

⁴ See *In re PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 374, Order No. 20-473 at 140 (Dec. 18, 2020) (“We find that the stipulation as a whole represents a reasonable resolution of the identified issues . . . and contributes to an overall settlement in the public interest.”); Order No. 09-432 at 6 (“The Commission concludes that the Stipulation is an appropriate resolution of all primary issues in this docket.”); Order No. 10-022 at 6 (“When considering a stipulation, we have the statutory duty to make an independent judgment as to whether any given settlement constitutes a reasonable resolution of the issues.”).

⁵ *In re PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket No. UE 267, Order No. 15-060 at 3 (Feb. 24, 2015).

1 they serve the public interest and result in just and reasonable rates.”⁶ The Commission’s policy
2 is to support settlements and encourage “parties to voluntarily resolve issues to the extent that
3 settlement is in the public interest.”⁷ When a party opposes a settlement, the Commission should
4 “review the issues pursued by that party, and consider whether the information and argument
5 submitted by the party . . . suggests that the settlement is not in the public interest . . . or
6 otherwise is not in accordance with the law.”⁸ Here, the Stipulation meets the Commission’s
7 standards for approval of settlements.

8 **IV. BACKGROUND AND LEGAL STANDARD FOR VRET APPROVAL**

9 This case reflects the first VRET proposal from PacifiCorp and the first VRET proposal
10 after the passage of House Bill 2021 (HB 2021), which requires the electric investor-owned
11 utilities to serve their customers with one hundred percent emissions free electricity by 2040.
12 The Stipulating Parties offer the following: 1) summary of the Commission’s VRET decision-
13 making to date and 2) perspective on the significance of VRETs in a HB 2021 paradigm. In
14 brief, Oregon law favors the creation of VRETs that protect non-participating customers. In
15 response to legislative direction, as described in detail later, the Commission identified
16 conditions for VRET approval, most notably requiring that VRET programs do not negatively
17 impact non-participating customers. VRETs offer cost-of-service nonresidential customers the
18 ability to subscribe to a cleaner electricity supply than the system average in exchange for paying

⁶ *In re Portland General Electric Company, Request for a General Rate Revision*, Docket No. UE 394, Order No. 22-129 at 16 (Apr. 25, 2022).

⁷ Order No. 09-432 at 6; Order No. 15-060 at 4 (“Although we encourage parties to resolve disputes informally, we must review the terms of any stipulation for reasonableness and accord with the public interest.”); *In re Portland General Electric Company, 2005 Resource Valuation Mechanism*, Docket No. UE 161, Order No. 04-573 at 4 (Oct. 5, 2004) (“The Commission encourages parties to a proceeding to voluntarily resolve issues to the extent that settlement is in the public interest.”).

⁸ *In re Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision*, Docket. No. UG 435, Order No. 22-388 at 6 (Oct. 24, 2022).

1 the incremental costs.⁹ In other words, VRETs enable customers to voluntarily incur the costs to
2 improve their environmental footprint. The Stipulating Parties urge the Commission to approve
3 the Stipulation in its entirety and enable PacifiCorp’s customers to benefit from having the
4 option of participating in a VRET, while protecting non-participating customers.

5 The Stipulating Parties emphasize that NewSun does not object to the creation of
6 PacifiCorp’s VRET but only to a subset of its terms. As discussed later in this brief, the
7 Stipulating Parties view NewSun’s concerns as out of scope for approval of a customer-facing
8 tariff like the ACT because they concern PPA terms between PacifiCorp and an ACT resource
9 developer. Neither the ACT nor the Stipulation dictate any PPA terms. Indeed, the potential
10 PPA terms are not yet known and will be subject to negotiations, and there will be future
11 opportunities for interested persons to raise any concerns with the Commission. What the
12 Stipulation does provide is the settlement of PacifiCorp’s proposed ACT and the development of
13 a program that has been negotiated with the Stipulating Parties. Through the Stipulation, the
14 Stipulating Parties have made a number of revisions and clarifications to the ACT that are
15 identified in the Stipulation.

16 **A. The Oregon State Legislature directed the Commission to consider VRETs**

17 In 2014, the Oregon State Legislature enacted House Bill 4126 (HB 4126), which
18 directed the Commission to “conduct a study to consider the impact of allowing electric
19 companies to offer [VRETs] to their nonresidential customers.”¹⁰ After completing the VRET
20 study in August 2015, the Commission began to implement HB 4126’s next directive:¹¹ to
21 “consider the results of the study ... in conjunction with” certain statutory factors “to determine

⁹ See generally PAC/100, Steward/31; Vitesse/100, Cebulko/7.

¹⁰ HB 4126, 2014 Reg. Sess., 77th Or. Leg. Assemb. § 3(2) (2014) [hereinafter, Or. HB 4126].

¹¹ *In re Public Utility Commission of Oregon, Voluntary Renewable Energy Tariffs for Non-Residential Customers*, Docket No. UM 1690, Order No. 15-258 at 1, App. A at 8-38 (Aug. 26, 2015).

1 whether, and under what conditions, it is reasonable and in the public interest to allow electric
2 companies to provide [VRETs] to nonresidential customers.”¹² Those statutory factors are:

3 (a) Whether allowing electric companies to provide [VRETs] to
4 nonresidential customers promotes the further development of
5 significant renewable energy resources;

6 (b) The effect of allowing electric companies to offer [VRETs] on
7 the development of a competitive retail market;

8 (c) Any direct or indirect impact, including any potential cost-
9 shifting, on other customers of any electric company offering a
10 [VRETs];

11 (d) Whether the [VRETs] provided by electric companies to
12 nonresidential customers rely on electricity supplied through a
13 competitive procurement process; and

14 (e) Any other reasonable consideration related to allowing electric
15 companies to offer [VRETs] to their nonresidential customers.¹³

16 In December 2015, the Commission decided to defer its decision on the above statutory
17 question.¹⁴ Instead, the Commission encouraged both PacifiCorp and Portland General Electric
18 Company (PGE) to file VRET proposals to inform its later decision-making.¹⁵ The Commission
19 indicated the VRET proposals should be designed using nine guidelines, described later in this
20 brief.¹⁶ However, by April 2016, neither utility was ready and able to file a VRET proposal that
21 conformed to the Commission’s specified guidelines.¹⁷ In June 2016, the Commission closed its
22 proceeding, with the understanding that a utility could re-open the process when and if it had a
23 VRET proposal for the Commission to consider.¹⁸

¹² Or. HB 4126 § 3(3).

¹³ Or. HB 4126 § 3(3).

¹⁴ Docket No. UM 1690, Order No. 15-405 at 1 (Dec. 15, 2015).

¹⁵ Order No. 15-405 at 1.

¹⁶ Order No. 15-405 at 1-2.

¹⁷ Docket No. UM 1690, PacifiCorp’s Letter Stating It Will Not Be Making a Voluntary Renewable Energy (VRET) Tariff Filing at This Time (Apr. 14, 2016); Docket No. UM 1690, PGE’s Response to Commission Order No. 15-405 Regarding Draft Voluntary Renewable Energy (VRET) Tariff Filing (Apr. 14, 2016).

¹⁸ Docket No. UM 1690, Order No. 16-251, App. A at 5 (July 5, 2016) (closing the docket but acknowledging utilities could petition to amend the order to resume the proceeding at a later date).

1 **B. The Commission modified its VRET guidelines in response to PGE’s proposal and**
2 **changed circumstances**

3 In April 2018, PGE petitioned to reopen the HB 4126 process and obtain Commission
4 approval of its proposed VRET.¹⁹ Staff recommended the Commission open a new docket to
5 consider PGE’s proposal, and the Commission did so.²⁰ The Commission ultimately approved
6 PGE’s VRET.²¹

7 In the course of reviewing PGE’s VRET, the Commission decided to launch a second
8 phase of the proceeding to “review and reconsider the nine conditions for VRET program
9 development” it had previously adopted.²² The Commission explained:

10 We see a need to assess changes in Oregon’s competitive electricity
11 supply market and in the renewable energy development
12 marketplace since 2016 as part of a reconsideration of the nine
13 conditions. In approving PGE’s program, we apply flexibility in
14 applying the nine conditions, because we do not require exactly the
15 same terms and conditions as the Direct Access program.

16 This reflects our view that significant differences in the ways a
17 utility offering and the direct access program affect cost-of-service
18 customers may warrant different terms and conditions for the
19 programs. A review of the nine conditions is appropriate in light of
20 these differences and the clarity offered by a specific proposal from
21 PGE.²³

22 Finally, in March 2021, the Commission “update[d] the nine conditions applicable to all
23 VRET proposals.”²⁴ At this time, the Commission’s VRET conditions are as follows:

¹⁹ Docket No. UM 1690, PGE’s Petition to Amend Order No. 16-251 and Reopen Docket at 1 (Apr. 13, 2018).

²⁰ *In re Portland General Electric Company, Investigation into Proposed Green Tariff*, Docket No. UM 1953, Prehearing Conference Memorandum at 1 (May 25, 2018) (granting Staff’s proposal to open a new docket instead of reopening the closed docket).

²¹ Docket No. UM 1953, Order No. 19-075 at 1 (Mar. 5, 2019), *amended by* Order No. 20-036 at 5 (Jan. 31, 2020) (adopting a stipulation regarding PGE’s VRET and VRET implementation); *see also* Docket No. UM 1953, Order No. 21-091 at 1 (Mar. 29, 2021) (approving further changes to PGE’s VRET), *corrected by* Order No. 21-096 at 1 (Mar. 30, 2021).

²² Order No. 19-075 at 8.

²³ Order No. 19-075 at 8.

²⁴ Order No. 21-091 at 1. *But see* Order No. 21-091 at 20 (ordering only that PGE “is authorized to develop and offer a voluntary renewable energy tariff program consistent with this order.”).

1 **C. HB 2021 is relevant to VRET consideration**

2 PacifiCorp’s decision to title its VRET its Accelerated Commitment Tariff is an
3 appropriate acknowledgement of a VRET in the context of HB 2021 and similar laws in other
4 states.²⁶ As noted earlier, VRETs offer nonresidential customers the ability to subscribe to a
5 cleaner electricity supply than the system average in exchange for paying the incremental costs.²⁷
6 HB 2021 obligates PacifiCorp and other electric utilities to make their systems substantially
7 cleaner. Specifically, PacifiCorp must “reduce [its] greenhouse gas emissions . . . 100 percent
8 below baseline emissions level” by 2040.²⁸ Oregon’s energy policy landscape has changed
9 dramatically with the passage of HB 2021.²⁹ In this context, the Legislature has already
10 committed PacifiCorp to clean up its electricity supply. Thus, VRET customers are deciding, not
11 whether to have cleaner electricity supply, but *when* to have a cleaner supply and what costs of
12 the transition to *voluntarily* absorb. This point bears emphasis: utilities will incur costs to
13 transition, and VRET customers *choose* to absorb incremental costs they could otherwise avoid
14 or defer.

15 The intent of a VRET is to allow eligible customers, including eligible customers with
16 new loads, to have the option of a cleaner energy supply, without that choice harming other
17 customers. PacifiCorp’s direct testimony noted that:

18 The ACT will allow PacifiCorp to add incremental renewable
19 resources, beyond planned economic investments, in an expedited
20 manner, accelerating state policy of decarbonization through the
21 voluntary participation of the Company’s participating customers
22 while limiting impacts to all customers. Because the incremental
23 cost of the bundled renewable resource would be borne by the
24 participating customer, the ACT would serve to advance

²⁶ See CUB/500, Gehrke/5 (discussing other states’ clean energy policies).

²⁷ See *generally* PAC/100, Steward/31; Vitesse/100, Cebulko/7.

²⁸ HB 2021, 2021 Reg. Sess., 81st Or. Leg. Assemb. (2021) § 3 (codified at ORS 469A.410) (emphasis added).

²⁹ CUB/500, Gehrke/4.

1 implementation of HB 2021 renewable energy targets while
2 protecting non-participating customers.³⁰

3 With the modifications in the Stipulation, the Stipulating Parties agree that the proposed
4 ACT is in the public interest. The Stipulating Parties negotiated the terms of the VRET to
5 address multiple stakeholder interests, including: 1) PacifiCorp’s VRET program should not
6 result in undue cost increases to cost of service customers and unwarranted costs shifting should
7 not occur between program participants and non-participants; 2) the VRET should not unfairly
8 undermine Direct Access Programs; and 3) the VRET should enable interested customers to help
9 facilitate the clean energy transition by encouraging clean energy development at no or a reduced
10 cost to other customers.

11 There is still implementation work to be done in future proceedings. In particular, it will
12 be critical that the energy and capacity credits developed in the future are accurately set.³¹
13 Although the exact value will be determined later, the Stipulating Parties agree that those credits
14 cannot exceed an ACT program participant’s cost of participation.³² This is one of the several
15 important provisions in the Stipulation to ensure that non-participating customers are not
16 adversely impacted by the program. Overall, the Stipulating Parties agree that the proposed
17 tariffs resulting from the Stipulation are fair, just, and reasonable, as required by ORS 756.040.

18 V. ARGUMENT

19 A. The ACT stipulation satisfies the Commission’s VRET conditions

20 This section provides an overview of how the ACT, as modified by the Stipulation,
21 satisfies each of the Commission’s VRET conditions. The Stipulation and proposed terms of the
22 ACT are discussed in more length in later sections.

³⁰ PAC/100, Steward/31-32.

³¹ CUB/500, Gehrke/6.

³² Fourth Partial Stipulation at 3 [hereinafter, Stipulation].

1 ***1. The proposed ACT satisfies Condition 1***

2 Condition 1 concerns the need for ACT resources to be compliant and consistent with
3 Oregon’s Renewable Portfolio Standard definitions.³³ The proposed ACT includes tariff
4 language specifying these criteria,³⁴ and PacifiCorp has committed to use these criteria in the
5 future when it selects ACT resources.³⁵ No party, including NewSun, expressed any concern
6 with the proposed ACT’s compliance with Condition 1. The proposed ACT thus complies with
7 Condition 1.

8 ***2. The proposed ACT satisfies Condition 2***

9 Condition 2 concerns the use of only bundled REC options, with the RECs retired by or
10 on behalf of participating customers.³⁶ There were originally concerns about compliance with
11 this condition, and the Stipulation resolves those concerns. The proposed ACT specifies that
12 customers will receive “bundled renewable electricity,” and it obligates PacifiCorp to explore
13 remedial options in the event an ACT resource “is no longer able to supply bundled renewable
14 energy.”³⁷ NewSun opposes these remedial options, as discussed further in later sections. The
15 Stipulating Parties disagree with NewSun’s claims. The proposed ACT also specifies that
16 “PacifiCorp shall retire RECs for all program participants.”³⁸ The proposed ACT—without
17 NewSun’s proposed modifications—thus complies with Condition 2.

³³ Order No. 21-091 at 5-6.

³⁴ Schedule 273, Original Sheet No. 273-2 through 273-3, Section 6 (*see* Stipulating Parties’ Fourth Partial Stipulation, Attachment A).

³⁵ PAC/800, Anderson/21.

³⁶ Order No. 21-091 at 6-7.

³⁷ Schedule 273, Original Sheet No. 273-1, Sections 3, 4(a).

³⁸ Stipulation at 4.

1 **3. *The proposed ACT satisfies Condition 3***

2 Condition 3 requires: “The year that a VRET-eligible resource becomes operational shall
3 be no earlier than one year prior to the resource being included in the program.”³⁹ The proposed
4 ACT specifies that ACT resources will be “new, meaning that the facility must not have been
5 operational earlier than one year prior to the resource being included in the program.”⁴⁰ The
6 proposed ACT thus complies with Condition 3.

7 **4. *The proposed ACT satisfies Condition 4***

8 Condition 4 requires: “The VRET program size is limited to . . . 175 aMW for
9 PacifiCorp.”⁴¹ There were initially concerns about this cap and the potential need for cap
10 increases. The proposed ACT has a general participation cap of 175 aMW.⁴²

11 The Stipulating Parties additionally agreed on clear expectations and a process for
12 potential requests to increase the cap, once the 175 aMW cap has been reached.⁴³ The
13 Stipulation provides:

14 Once the cap has been reached, a customer with 10 aMW or greater
15 of new load may request Commission approval of an increase to the
16 participation cap, along with a request that the Commission issue a
17 decision within six months of the filing. PacifiCorp shall provide the
18 customer an estimated impact analysis that approximates how
19 increasing the cap could impact PacifiCorp’s energy and capacity
20 needs based on the new load and a proxy renewable resource to be
21 used in the customer’s request for an increase to the cap. The
22 Commission shall evaluate the increase in the participation cap, to
23 determine, among other things, whether the proposed increase:

- 24 a. Poses no significant risk or cost to non-participating cost-
25 of-service customers associated with the increase;
- 26 b. Poses no significant impacts to the competitive market;

³⁹ Order No. 21-091 at 7.

⁴⁰ Schedule 273, Original Sheet No. 273-3, Section 6(c).

⁴¹ Order No. 21-091 at 8.

⁴² Schedule 273, Original Sheet No. 273-3, Section 1.

⁴³ Schedule 273, Original Sheet No. 273-3, Section 2.

- 1 c. Advances the goals reflected in HB 2021, including but
- 2 not limited to emissions impacts;
- 3 d. Other criteria as determined by the Commission or raised
- 4 by stakeholders to demonstrate good cause⁴⁴

5 The above criteria are modeled on the Commission’s prior orders on PGE’s VRET and
6 on the New Load Direct Access program.⁴⁵ In separate supplemental testimony in support of the
7 Stipulation, both CUB and Vitesse discussed further how the final criterion enables stakeholders
8 to also raise other issues that may be relevant to a request to expand the cap, which is important
9 because all issues affecting a future request to expand the cap cannot be known at this time.⁴⁶
10 Ultimately, of course, the Commission will determine whether an expansion is in the public
11 interest, if a request is filed.

12 The proposed ACT thus complies with Condition 4 and provides meaningful guidance for
13 future proceedings that may arise concerning this Condition.

14 **5. The proposed ACT satisfies Condition 5/6**

15 Condition 5/6 concerns a VRET’s potential impact on the competitive retail market and
16 specifically Direct Access programs. There were initially concerns about this issue. The
17 Stipulation resolves those concerns or adequately defers consideration to other appropriate
18 Commission proceedings. The Stipulation declares:

19 Customers receiving energy service under both direct access and
20 cost-of-service rates are eligible to participate in the program for
21 those loads receiving energy service under cost-of-service rates.
22 Any other Direct access issues will be addressed in docket UM 2024
23 and other proceedings related to the Commission’s direct access
24 investigation. Nothing in this partial settlement prevents Parties
25 from taking any position in docket UM 2024 and other proceedings
26 related to the Commission’s direct access investigation.

⁴⁴ Stipulation at 2-3.
⁴⁵ *In re Rulemaking Related to a New Load Direct Access Program*, Docket No. AR 614, Order No. 18-341 at 7 (Sept. 14, 2018); Order No. 21-091 at 2-3, 12-16.
⁴⁶ CUB/500, Gehrke/3; *see also* Vitesse/300, Cebulko/9.

1 The proposed ACT thus complies with Condition 5/6. Any other direct access issues will be
2 addressed in other dockets.

3 **6. *The proposed ACT satisfies Condition 7***

4 Condition 7 concerns utility ownership of a VRET resource. PacifiCorp is not currently
5 proposing to own any VRET resource, so these conditions do not need to be resolved at this
6 time. The Stipulation provides:

7 Prior to PacifiCorp committing to develop a company-owned
8 resource as an ACT program resource, PacifiCorp agrees that it will
9 submit a filing detailing accounting methods and safeguards,
10 including treatment of the subscriber mismatch fee for Commission
11 approval. Nothing in this partial settlement prevents Parties from
12 taking any position on the applicability of the Commission's
13 Voluntary Renewable Energy Tariff (VRET) Design Criteria
14 Condition 7 or other matter of law or policy in that proceeding.⁴⁷

15 NewSun raises concerns about utility ownership, but that concern is hypothetical at this
16 time and does not need to be resolved. Thus, the proposed ACT complies with Condition 7. If
17 PacifiCorp later wishes to own a VRET resource, it will need to obtain Commission approval
18 that its proposal at that time is compliant with Condition 7.

19 Perhaps relatedly, there were concerns initially about how to create a Customer Supply
20 Option (CSO). PacifiCorp's initial application did not propose a CSO, but it was an important
21 component for some of the Stipulating Parties. The Stipulation also resolves this issue. The
22 proposed ACT and Stipulation both contain language explaining the process for customers to
23 meet with PacifiCorp about customer-identified resources, how any concerns will be resolved,
24 and other important terms and conditions for CSO service.⁴⁸

⁴⁷ Stipulation at 5.

⁴⁸ Schedule 273, Original Sheet No. 273-4, Section 1; Stipulation at 5-6.

1 7. *The proposed ACT satisfies Condition 8*

2 Condition 8 concerns the protection of non-participating utility customers. There were
3 initially concerns about this condition, and the Stipulation resolves those concerns. The
4 protections are discussed in more length later in this brief. The proposed ACT thus complies
5 with Condition 8.

6 8. *The proposed ACT satisfies Condition 9*

7 Condition 9 requires VRETs to be publicly available and subject to Commission review
8 to ensure it is fair, just and reasonable.⁴⁹ Schedule 273 will be a public tariff, approved by the
9 Commission in this proceeding. The Stipulating Parties have all agreed that the proposed ACT is
10 fair, just and reasonable. The proposed ACT thus complies with Condition 9.

11 Relatedly, the Stipulation recognizes the potential for issues to arise after the VRET
12 launch. The Stipulation requires PacifiCorp to hold a workshop before December 31, 2023 to
13 discuss issues encountered during program implementation and potential modifications to help
14 refine the program.⁵⁰ This requirement thus provides even more public visibility and
15 transparency, and it offers an avenue for future discussion on any issues that may arise.

16 **B. The ACT responds to customer demand for emission-free generation without**
17 **adversely impacting non-participating customers.**

18 The proposed ACT will provide PacifiCorp’s nonresidential customers the opportunity to
19 accelerate the decarbonization of their energy supply by facilitating the development of new
20 renewable energy facilities.⁵¹ PacifiCorp will provide bundled renewable energy and the
21 corresponding RECs to participating customers through specified additions of renewable

⁴⁹ Order No. 21-091 at 16.

⁵⁰ Stipulation at 5.

⁵¹ Joint Stipulating Parties/100, McVee, Bolton, Gehrke, Kronauer, Cebulko, Opatrny/2.

1 resources that are incremental to those selected for system use.⁵² Participants in the program will
2 take a percentage of variable generation output from ACT program resource(s) based on their
3 proportional percentage of customer participating load subscribed to those resource(s).⁵³

4 **1. The ACT is supported by a broad array of stakeholders and reflects a**
5 **reasonable compromise of competing interests.**

6 The Stipulation is the result of a robust collaborative process and represents a
7 comprehensive resolution of the issues related to PacifiCorp’s proposed VRET and is supported
8 by diverse stakeholders representing participating customers, non-participating customers, and
9 developers.⁵⁴ The Stipulating Parties’ agreement followed a thorough investigation, including
10 extensive discovery and submission of testimony, and resulted from numerous in-depth
11 settlement conferences.⁵⁵ The Stipulating Parties carefully crafted the ACT to balance
12 competing interests and to obtain the support of a broad range of parties. Each Stipulating Party
13 has reviewed the record and agrees that the Stipulation is reasonable, in the public interest, and is
14 expected to result in a viable and voluntary program to allow participating customers to
15 expeditiously decarbonize their energy.⁵⁶ NewSun’s objections do not merit disturbing the
16 Stipulating Parties’ carefully crafted agreement by adopting NewSun’s recommendations.

17 **2. The ACT includes critical protections for participating and non-participating**
18 **customers.**

19 To protect non-participating customers from potential cost shifting, the ACT includes an
20 initial participation cap of 175 average megawatts that can increase only with specific
21 Commission approval.⁵⁷ The ACT also includes an energy and capacity credit for non-

⁵² Joint Stipulating Parties/100, McVee, Bolton, Gehrke, Kronauer, Cebulko, Opatrny/2.

⁵³ Stipulation at 3.

⁵⁴ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/5.

⁵⁵ Joint Stipulating Parties/100, McVee, Bolton, Gehrke, Kronauer, Cebulko, Opatrny/3.

⁵⁶ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/12.

⁵⁷ Stipulation at 2.

1 participating customers based on the expected generation and value ACT resources bring to
2 PacifiCorp's system.⁵⁸ The energy and capacity credit cannot exceed the participating
3 customer's cost to participate in the program. Further, the flexibility retained in the ACT enables
4 PacifiCorp to negotiate the best PPA terms to protect the interests of non-participating
5 customers.

6 To ensure that participating customers receive the ACT's benefits, PacifiCorp will match
7 participating customer load to generation from a participating renewable resource or resources.⁵⁹
8 If an ACT resource fails to perform and defaults on the terms of its PPA, the tariff requires that
9 PacifiCorp take reasonable efforts to begin procurement of a replacement resource.⁶⁰ This
10 critical provision better ensures that, in the event of termination of an ACT PPA, a replacement
11 resource is available to mitigate the risk of program interruptions..⁶¹ ACT participants commit to
12 pay a premium and in return expect the benefits of bundled energy and RECs. Under-delivery
13 means that participants may not receive the expected benefits of their subscription.⁶² Non-
14 participants also require assurance the resource will perform to ensure the fixed energy and
15 capacity credit associated with the resource remain equitable.

16 **3. *The ACT is consistent with the Commission's competitive bidding rules.***

17 PacifiCorp will select resources to serve ACT participants and to replace resources in the
18 event of a termination in accordance with the Commission's competitive bidding rules.⁶³ The
19 Company will leverage existing competitive procurement processes to identify potential projects
20 eligible for initial roll-out of the ACT.⁶⁴ Future ACT resources will also be procured in

⁵⁸ Joint Stipulating Parties/100, McVee, Bolton, Gehrke, Kronauer, Cebulko, Opatrny/6.

⁵⁹ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/7.

⁶⁰ Stipulation at 3-4.

⁶¹ Stipulation at 3-4.

⁶² Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13-14.

⁶³ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13.

⁶⁴ Joint Stipulating Parties/100, McVee, Bolton, Gehrke, Kronauer, Cebulko, Opatrny/2.

1 accordance with the Commission’s competitive bidding rules.⁶⁵ This will allow the Company to
2 identify a variety of resources that meet customer expectations while minimizing costs and
3 maximizing overall system benefits.

4 When a resource is selected for the ACT, PacifiCorp will negotiate a PPA with the
5 developer. The terms and conditions of an ACT PPA will mirror the terms and conditions for
6 system resource PPAs, ensuring that ACT PPAs present no greater risk to PacifiCorp or
7 customers than non-ACT resources.⁶⁶

8 **C. NewSun’s objections are unnecessary and unreasonable.**

9 NewSun is the only party opposing the Stipulation. Although NewSun does not oppose
10 approval of the ACT, NewSun recommends several material and confusing modifications to the
11 Stipulating Parties’ agreement that, if approved, would undermine the Stipulation, and upset the
12 reasonable balance achieved by the Stipulating Parties’ agreement.

13 In addition, adopting NewSun’s recommendations could stall implementation of the
14 ACT, given the need for other regulatory review. As explained in Vitesse’s expert testimony:

15 [Previously,] PacifiCorp opposed having a variable energy option
16 (now the ACT Customer share) because of concerns about securities
17 regulations. . . . The proposed Fourth Partial Stipulation addresses
18 PacifiCorp’s concerns by making the ACT “contingent upon
19 PacifiCorp receiving a no-action letter from the Securities and
20 Exchange Commission [(“SEC”)] that the design of this program
21 does not involve the sale of securities.” “If PacifiCorp does not
22 receive a no-action letter from the [SEC], the company will develop
23 and file a new program proposal.”

24 The Stipulating Parties are concerned that approval of NewSun’s objections could delay
25 the SEC no-action letter and ultimately delay the VRET’s availability to customers. It is not
26 clear how long it will take for the SEC to respond to PacifiCorp’s request for a no-action letter;

⁶⁵ Stipulation at 4.

⁶⁶ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/5.

1 however, the hope is that SEC promptly reviews and provides a no-action letter expeditiously so
2 that there are no or only minimal delays.⁶⁷ Approval of NewSun’s objections could lead to
3 cascading delays to the VRET’s availability. Any delay to the program could deter customers
4 from participating.

5 For the following reasons, NewSun’s recommendations should be rejected, and the
6 Commission should approve the Stipulation without modifications.

7 ***1. NewSun’s recommendations improperly dictate ACT PPA terms.***

8 NewSun’s recommendations largely ask the Commission to force PacifiCorp to include
9 certain terms and conditions in its PPAs for ACT resources.⁶⁸ For example, NewSun
10 recommends that Schedule 273 prohibit an ACT PPA from including language that contemplates
11 that a “default” by the counterparty could lead to termination and how the Company would
12 remediate supply for the ACT.⁶⁹ NewSun also asks the Commission to dictate PPA terms
13 around damages for under-delivery, including specific provisions around the treatment of under-
14 delivery of RECs.⁷⁰ These recommendations underlie NewSun’s attempt to unreasonably limit
15 PacifiCorp’s ability to fully negotiate an arm’s length ACT PPA. Adopting these
16 recommendations would unnecessarily tie PacifiCorp’s hands, to the detriment of all customers.

17 The proposed Schedule 273 does not establish or dictate any PPA terms between
18 PacifiCorp and developers.⁷¹ As a matter of principle and public policy, the Commission should
19 not adjudicate or require any particular terms or conditions in the tariff or order approving the
20 Stipulation and tariff. If the tariff is approved, PacifiCorp will engage in contract negotiations

⁶⁷ Vitesse/300, Cebulko/14-17 (internal citations omitted).

⁶⁸ See NewSun/100, Stephens/5-6 (recommendations #1, #2, and #3).

⁶⁹ NewSun/100, Stephens/5 (recommendation #1).

⁷⁰ NewSun/100, Stephens/6 (recommendation #3).

⁷¹ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/5.

1 with participating developers that will establish the terms and conditions of the PPAs with those
2 developers. The purpose of Schedule 273 is to establish the ACT program, not to finalize PPA
3 terms for agreements stemming from the ACT.⁷² The specific terms of each PPA will be
4 negotiated on a case-by-case basis under the typical competitive process, and the Commission
5 should not impose unnecessary burdens or terms on the Company—particularly terms that are
6 harmful to customers and commercially unreasonable.⁷³ If there are any disagreements about the
7 terms, then the developer and customers will retain the right to bring a dispute to the
8 Commission.⁷⁴ The approach here is generally consistent with the Commission’s approval of
9 PGE’s VRET, where the Commission approved the tariff but did not dictate PPA terms and
10 conditions.⁷⁵

11 By allowing PacifiCorp to freely negotiate ACT PPAs, those agreements will have the
12 same terms and conditions as non-ACT PPAs used to serve customers.⁷⁶ PacifiCorp will acquire
13 ACT resources in accordance with the Commission’s competitive bidding rules and will
14 negotiate ACT PPAs consistent with how PacifiCorp negotiates all other long-term PPAs for
15 system resources selected in request for proposals (RFPs). By dictating the terms of the ACT
16 PPA, NewSun is preemptively limiting PacifiCorp’s options and harming customers by
17 disadvantaging PacifiCorp’s bargaining position.

18 **2. *The ACT does not require termination in the event of a default.***

19 NewSun claims that Schedule 273 “appears to authorize—if not compel—PacifiCorp to
20 terminate a PPA with a[n] [ACT] resource for *any* event of default no matter how minor[.]”⁷⁷

⁷² Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/5.

⁷³ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/5, 7.

⁷⁴ Vitesse/300, Cebulko/14.

⁷⁵ See Order No. 21-091 at 10-11 (recognizing the need for flexibility in setting PPA terms and conditions).

⁷⁶ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/5.

⁷⁷ NewSun/100, Stephens/10 (emphasis in original).

1 This is untrue. The Stipulation and Schedule 273 do not dictate any PPA terms and do not
2 *require* termination of a PPA in the event of a default. Schedule 273 would allow PacifiCorp to
3 take “reasonable efforts to begin procurement of a replacement resource(s) if an ACT program
4 resource defaults,” but would not require PacifiCorp to immediately terminate the PPA.⁷⁸ By
5 allowing replacement efforts to begin in the event of a default, Schedule 273 reasonably ensures
6 that a replacement resource will be available within a reasonable time *if a default is uncured and*
7 *PacifiCorp must terminate the PPA.*⁷⁹ The ACT grants flexibility to PacifiCorp in negotiating
8 PPA terms and each PPA will have terms that reflect the negotiated agreement between
9 PacifiCorp and the participating developer, including terms relating to what constitutes a default
10 and what remedies are available in the event of default.

11 Contrary to NewSun’s claims,⁸⁰ the Stipulating Parties did not intend “default” to suggest
12 that PacifiCorp could terminate a PPA for a minor issue, like a billing dispute.⁸¹ The language
13 of the Stipulation contemplates that some defaults may require termination, while in others a
14 lesser remedy may be appropriate if the default is cured.⁸² The only way that PacifiCorp can
15 terminate a PPA for an ACT program resource is by following the terms of that PPA, which are
16 negotiated and agreed to by the developer. If PacifiCorp and the developer agree that a
17 particular event should result in termination, then the Commission should not unnecessarily limit
18 the terms of that agreement.⁸³ Indeed, under NewSun’s proposal, it is unclear if PacifiCorp
19 could *ever* terminate an ACT PPA because some sort of default is typically required before
20 termination and NewSun argues that the Commission should prohibit PacifiCorp from

⁷⁸ Joint Stipulating Parties/100, McVee, Bolton, Gehrke, Kronauer, Cebulko, Opatrny/4.

⁷⁹ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/6-7.

⁸⁰ See NewSun/100, Stephens/10.

⁸¹ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/8.

⁸² Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/8.

⁸³ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/8.

1 terminating a PPA for default. PacifiCorp should retain the flexibility to negotiate appropriate
2 terms with the participating developers to ensure that the remedies for default provide adequate
3 protections for customers.

4 **3. *PacifiCorp must be able to negotiate reasonable terms to address under-***
5 ***delivery.***

6 As part of its argument that PacifiCorp should be prohibited from terminating a PPA for
7 defaults, NewSun very specifically argues that PacifiCorp should never be able to terminate an
8 agreement in the event of a default for under-delivery.⁸⁴ Approving this limitation would
9 severely undermine the ACT by effectively eliminating remedies for under-delivery—meaning
10 participating customers would subscribe to a premium for bundled energy and RECs without
11 confidence that the PPA counterparty will deliver and that there will be adequate remedies for
12 failure to deliver.

13 Contrary to NewSun’s recommendation,⁸⁵ if a participating resource fails to deliver
14 energy in accordance with the terms of the PPA and the failure to deliver constitutes a default
15 under the terms of the negotiated PPA and the default is not cured, then PacifiCorp *must* take
16 steps to remedy that shortfall, including potentially terminating the PPA.⁸⁶ If the Commission
17 were to limit PacifiCorp’s authority to remedy under-delivery, participating customers would be
18 denied the expected generation benefits and the entire ACT framework would collapse.⁸⁷ If
19 under-delivery is a default under the PPA and is not cured, the termination of the PPA is a
20 reasonable option under the circumstances, and termination is allowable by terms of the
21 negotiated PPA, then PacifiCorp should not be prohibited from pursuing that option. Under-

⁸⁴ NewSun/100, Stephens/5-6.

⁸⁵ NewSun/100, Stephens/6 (recommendation #2).

⁸⁶ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/8.

⁸⁷ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/8-9, 13-14.

1 delivery without a remedy—as NewSun recommends—will directly harm participating
2 customers.⁸⁸

3 To be clear, Schedule 273 does not *require* termination if the resource under-delivers
4 because Schedule 273 does not dictate mandatory PPA terms. This means that if the negotiated
5 PPA includes remedies short of termination for under-delivery and remedies do not adversely
6 impact participating and non-participating customers, then PacifiCorp may pursue those
7 alternative remedies. The terms in the Stipulation contain adequate flexibility to ensure the
8 program is implemented in a way that protects the interests of participating and non-participating
9 customers.

10 NewSun also argues that PacifiCorp should rely on unbundled RECs if the ACT resource
11 under-delivers.⁸⁹ NewSun’s recommendation not only improperly dictates negotiated PPA
12 terms, it also undermines the purpose of Schedule 273—which is to procure incremental
13 renewable generation that will be dedicated to serve specific customers with bundled RECs.⁹⁰
14 Replacing specific generation resources with unbundled RECs is contrary to the Commission’s
15 VRET conditions and would be essentially duplicative of the service options already available
16 under PacifiCorp’s Schedule 272.⁹¹

17 **4. *NewSun unreasonably relies on short-term trading agreements to dictate long-***
18 ***term PPA terms.***

19 NewSun asks the Commission to establish ACT PPA terms based on master agreements
20 that govern short-term trading activities on the wholesale market, including the Western Systems
21 Power Pool Agreement (WSPP), the North American Power Annex to the International Swap

⁸⁸ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13-14.

⁸⁹ See NewSun/100, Stephens/6.

⁹⁰ Evidentiary Hearing Transcript 37:2-8 (Nov. 18, 2022) [hereinafter Evid. Tr.].

⁹¹ See Evid. Tr. 62:1-14.

1 Dealers Association, and the Edison Electric Institute Master Purchase and Sale Agreement.⁹²
2 These master agreements are designed to cover numerous types of short-term bilateral trading
3 activities, like day-ahead and real-time purchases and sales of energy, capacity, or ancillary
4 services.⁹³ Indeed, for PacifiCorp, the WSPP agreement is limited to wholesale trading
5 transactions with a term of no more than one year.⁹⁴ The master agreements are not long-term
6 PPAs for dedicated resources, which is why PacifiCorp does not rely on these master agreements
7 when it acquires resources through its system resource RFPs.⁹⁵

8 The master agreements govern fundamentally different types of transactions than the
9 ACT and the terms and conditions for short-term wholesale trading agreements are not
10 reasonable for long-term PPAs dedicated to specific resources, like those that will serve
11 customers under the ACT. Therefore, not only is it unreasonable to dictate PPA terms in
12 Schedule 273, NewSun's specific reliance on terms taken from short-term trading agreements is
13 entirely inappropriate.

14 **5. *The ACT contains sufficient protections for participating customers when***
15 ***providing replacement resources.***

16 The proposed Schedule 273 includes a commitment from the Company to coordinate
17 with participating customers in the event of a default resulting in potential termination of an
18 ACT resource PPA.⁹⁶ NewSun argues that the Commission should grant participating customers
19 the power to veto any resource that the Company decides to acquire as a replacement for the
20 terminated resource.⁹⁷ Allowing a participating customer to veto a replacement resource,

⁹² NewSun/100, Stephens/11.

⁹³ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/11.

⁹⁴ WSPP Inc. First Revised Rate Schedule FERC No. 6, Western Systems Power Pool at Schedule Q (2003), https://www.wspp.org/pages/documents/08_26_22_current_effective_agreement.pdf.

⁹⁵ Evid. Tr. 50:10-24.

⁹⁶ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/10.

⁹⁷ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/10.

1 however, would potentially harm other participating customers. Single ACT resources may
2 serve more than one participating customer. If that resource under-delivers, defaults, and has its
3 PPA terminated, PacifiCorp must acquire a replacement resource that will serve all participating
4 customers previously served by the terminated PPA. If a single customer can veto the
5 replacement resource, then a single customer can effectively terminate service under the ACT for
6 other customers.⁹⁸ The process agreed to by the Stipulating Parties already has sufficient
7 protections for participating customers, which is why it is supported by potentially participating
8 customers. PacifiCorp will coordinate with the customers affected by a default or under-delivery
9 to ensure that their needs are adequately met in the procurement of a replacement resource.
10 Allowing the customer veto suggested by NewSun would turn a reasonable coordination into an
11 unwieldy process and expose other participating customers to potential harm.

12 **6. *PacifiCorp will not own any ACT resources without seeking Commission***
13 ***approval.***

14 Before PacifiCorp commits to develop a Company-owned resource, the Company will
15 submit a filing requesting Commission approval. That filing must include detailed accounting
16 methods and safeguards, including treatment of the subscriber mismatch fee for Commission
17 approval.⁹⁹ NewSun expresses concern that, in the event of termination, PacifiCorp may utilize
18 its own, self-built replacement resources to meet the needs of participating customers.¹⁰⁰ This,
19 NewSun argues, would happen outside of the competitive bidding process and without
20 Commission oversight.¹⁰¹ NewSun also erroneously claims that PacifiCorp would be solely

⁹⁸ Evid. Tr. 38:18-21.

⁹⁹ Joint Stipulating Parties/100, McVee, Bolton, Gehrke, Kronauer, Cebulko, Opatrny/7.

¹⁰⁰ NewSun/100, Stephens/17.

¹⁰¹ NewSun/100, Stephens/17.

1 responsible for this decision and may “control the visibility” of the decision to replace a
2 defaulted resource with its own resource.¹⁰²

3 PacifiCorp currently has no plans to utilize Company-owned resources for the ACT
4 program.¹⁰³ If, in the future, PacifiCorp elects to utilize such a resource, the Company will file a
5 specific proposal for approval with the Commission.¹⁰⁴ Additionally, any ACT resource will be
6 procured in compliance with the Commission’s competitive bidding rules, including potential
7 resources owned by PacifiCorp. These protections will ensure that the Commission will have the
8 opportunity to exercise reasonable oversight over the use of any Company-owned resource. As
9 such, NewSun’s argument is erroneous and unnecessary.

10 **7. PGE’s Schedule 55 is not a reasonable alternative to the ACT.**

11 NewSun argues that the Commission should modify the agreed-upon Schedule 273 to
12 mirror the terms in PGE’s existing Schedule 55.¹⁰⁵ This recommendation is unreasonable. First,
13 the Stipulation was negotiated as a comprehensive agreement among a broad and diverse group
14 of stakeholders. The terms of Schedule 273 represent a reasonable compromise of competing
15 positions and interests, and the terms were negotiated as a whole. The Commission should not
16 disturb certain elements because it risks compromising the integrity of the ACT program
17 negotiated by the Stipulating Parties.

18 Second, the vaguer terms included in the PGE tariff around under-performance are
19 contrary to the more specific language the Stipulating Parties want for PacifiCorp’s program.
20 For example, Schedule 273 departed from PacifiCorp’s earlier language referencing resources

¹⁰² NewSun/100, Stephens/17.

¹⁰³ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13.

¹⁰⁴ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13.

¹⁰⁵ See, e.g., Evid. Tr. 36:5-24.

1 that were “consistently underperforming” in favor of the more specific reference to “default.”¹⁰⁶
2 Consistent underperformance may occur but not rise to the level of a contractual default. By
3 instead referencing a default, the Stipulating Parties’ intent was to avoid utilizing a vague term in
4 future PPAs. The Stipulating Parties view this change as a refinement of a potentially
5 ambiguous term that may avoid confusing customers regarding when PacifiCorp might act in
6 response to under-delivery and to generally defer this issue to the yet-to-be negotiated PPA terms
7 that may carefully define when a “default” for consistent underperformance has occurred.

8 Third, the Stipulating Parties negotiated to resolve concerns about copying PGE’s ability
9 to use unbundled RECs to address under-delivery and the potential conflict with the
10 Commission’s second VRET condition for VRET options. Upsetting this balance would be
11 unreasonable, as discussed above.

12 Fourth, Schedule 55’s language allowing a customer to potentially veto a replacement
13 resource is unworkable for PacifiCorp’s program, as discussed above.

14 Furthermore, the Stipulating Parties have used what they have learned from PGE’s VRET
15 program to further refine the requirements for PacifiCorp’s ACT in a manner that benefits
16 participating and non-participating customers. There is no mandate that the VRET programs of
17 all electric utilities be mirror-images of one another.

18 VI. CONCLUSION

19 The Commission should approve the Stipulation without modifications and without
20 conditions. The Stipulation is backed by a diverse group of stakeholders, is supported in the
21 record, and will result in a reasonable VRET for PacifiCorp that is consistent with the
22 Commission’s policies and responsive to customer needs. NewSun’s objections to the

¹⁰⁶ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/7.

1 Stipulation are unnecessary and unreasonable and, if adopted, would compromise the Stipulating
2 Parties' agreement, and weaken the critical customer protections the Stipulating Parties relied on
3 to support adoption of the ACT.

4 Dated this 8th day of December 2022.



Katherine A. McDowell
Adam C. Lowney
McDowell Rackner Gibson PC
419 SW 11th Ave., Suite 400
Portland, OR 97205

Carla Scarsella
Ajay Kumar
Attorneys for PacifiCorp

Johanna Riemenschneider
Attorney for Public Utility Commission of Oregon Staff

Michael P. Goetz
Attorney for Oregon Citizens' Utility Board

Carl Fink
Attorney for NIPPC

Irion Sanger
Joni Sliger
Attorneys for Vitesse, LLC

Vicki M. Baldwin
Attorney for Walmart, Inc.