BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

Docket No. UE 399

In the matter of PACIFICORP, dba PACIFIC POWER,   Request for General Rate Revision

TESTIMONY OF BRADLEY CEBULKO IN SUPPORT OF THE FOURTH PARTIAL STIPULATION

October 10, 2022

I. INTRODUCTION

Q. Please state for the record your name, position, and business address.

A. My name is Bradley Cebulko. I am a Manager at Strategen Consulting located at 2150 Allston Way Suite 400, Berkeley, California 94704.

Q. On whose behalf are you appearing in this proceeding?

A. I am testifying on behalf of Vitesse, LLC ("Vitesse").

Q. Are you the same Bradley Cebulko that previously filed testimony in this proceeding on behalf of Vitesse?

A. Yes, I am.

Q. What is the purpose of your testimony?

A. I am testifying on behalf of Vitesse regarding the proposed Fourth Partial Stipulation.

Q. Are you sponsoring any exhibits as part of your Voluntary Renewable Energy Tariff ("VRET") Settlement Testimony?

A. No.

Q. Please summarize your recommendations.

A. I recommend that the Commission adopt the settlement stipulation and proposed tariff.

II. VITESSE AND META CLEAN ENERGY GOALS

Q. Please remind the Commission of your client Vitesse's interest in this case?

A. Vitesse is a limited liability company that is wholly owned by Meta Platforms, LLC ("Meta") and operates data processing and hosting centers across the country, including in Oregon. Meta has ambitious climate and renewable energy goals, including sourcing 100 percent of its global operations from renewable energy.[1] It is currently a Schedule

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[1] Urvi Parekh, *Achieving our goal: 100% renewable energy for our global operations*, Tech at Meta (Apr. 15, 2021), https://tech.fb.com/engineering/2021/04/renewable-energy.

272 Renewable Energy Rider Optional Bulk Purchase Option ("Schedule 272") customer, but is interested in the development of the Accelerated Commitment Tariff ("ACT") as it is an opportunity to purchase a bundled renewable energy product, which also aligns with Meta's energy goals. Vitesse's interests also include ensuring that the program is fair and does not harm non-participating customers.

It is my understanding that Vitesse does not have immediate plans for future growth in Oregon, however, it is likely to have additional data center needs in the future and views the state as a potential site for future growth. That is why Vitesse was particularly focused on identifying a path for new load to come onto PacifiCorp's system and be served by bundled renewable energy through the ACT.

Q. Please remind the Commission of Meta's energy goals and its corporate requirements.

A. As I described in greater detail in my Opening Testimony, Meta's foremost goal is to use as little energy as possible to operate its data center facilities.[2] After it has ensured that its operations are as efficient as reasonably possible, Meta is committed to supporting its operations with renewable energy. In 2011, Meta was one of the first tech companies to commit to the goal of powering all its facilities and infrastructure with 100 percent clean and renewable energy. In 2020, Meta achieved its goal of sourcing 100 percent renewable energy to support global operations, cutting its operational emissions by 94 percent (surpassing its 75 percent target) despite rapid expansion of its global data center fleet. Citing the urgency of the climate crisis and of limiting temperature increases to

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2 Vitesse/100, Cebulko/4.

1.5° Celsius above pre-industrial levels as outlined in the Paris Agreement, Meta has set a further goal to achieve net zero emissions across Meta's value chain (Scope 3 emissions) by 2030.[3] A key component of Meta's renewable energy strategy is to partner with local utilities to launch green tariff programs (which include VRET programs) that allow Meta to source from renewable options at predictable rates while promoting new investments in clean energy. By the time of this filing, Meta has helped start seven new green tariff programs[4] and contracted for the addition of over 8,000 MW of new solar and wind capacity globally.[5]

Q. Please remind the Commission how Meta has achieved its renewable energy goals with its Vitesse facilities in Oregon.

A. To date, Vitesse has taken service under PacifiCorp's Schedule 272,[6] using the program to obtain Renewable Energy Certificates ("RECs") equal to 100 percent of its Oregon data center load. Schedule 272 has been a successful program which has resulted in substantial new renewables on PacifiCorp's system, including 100 MW of new solar in Crook County. Schedule 272 was developed in 2004 and, like many of its green power counterparts around the country, it was designed as a REC only program. The Company

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[3] *Facebook's Net Zero Commitment*, Facebook Sustainability at 1-2 (Sept. 2020), https://sustainability.fb.com/wp-content/uploads/2020/12/FB_Net-Zero-Commitment.pdf.

[4] *Facebook's U.S. Renewable Energy Impact Study*, RTI International at 9 (May 2021), https://www.rti.org/publication/facebooks-us-renewable-energy/fulltext.pdf.

[5] Veronika Hanze, *Corporate Clean Energy Buying Tops 30GW Mark in Record Year*, BloombergNEF (Jan. 31, 2022), https://about.bnef.com/blog/corporate-clean-energy-buying-tops-30gw-mark-in-record-year/.

[9] *See Pacific Power Renewable Energy Rider Optional Bulk Purchase Option*, https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/rates/272_Renewable_Energy_Rider_Optional_Bulk_Purchase_Option.pdf.

subsequently amended the tariff to allow an option to contract with the Company for RECs from a specified renewable resource.[7] This optionality for RECs from a specified resource was a substantial improvement for customers like Vitesse that need to demonstrate the additionality of the resource due to participation in the program. Thus, Vitesse continues to obtain energy under a cost-of-service offering (Schedule 48 – Large General Service 1000kW and Over) while obtaining RECs under Schedule 272. The ACT, as described below, allows customers to procure RECs bundled with the energy from a specific project and assigns all the costs and benefits of the specific resource to the participating customer. This approach is another way for entities like Vitesse to achieve their renewable energy goals.

III. ACT PROGRAM CAP

Q. Could you please summarize your position regarding the program cap?

A. Yes. In my Opening Testimony, I recommended that the Commission "order a separate cap be established in the ACT for new loads" with a new load cap of at least 175aMW.[8] In the alternative, if the Commission was not willing to create a separate cap for new load, I recommended that the Commission allow new or existing customers with new load to petition the Commission for an exception on a case-by-case basis.[9] As I wrote in my Rebuttal Testimony, creating a pathway for new load to be served with 100 percent clean energy through the ACT is in the public interest, particularly when the customer is

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[7] *See PacifiCorp Schedule 272 Renewable Energy Rider Optional Bulk Purchase*, Docket No. ADV 386, Advice No. 16-012 (Sept. 27, 2016).

[8] Vitesse/100, Cebulko/21.

[9] Vitesse/100, Cebulko/21.

willing to pay 100 percent of incremental costs.[10] This is especially true in light of the passage of House Bill ("HB") 2021, which requires all electricity to be 100 percent greenhouse gas emissions free by 2040.[11]

Q. Does the settlement create a path for new load to participate in the ACT?

A. Yes. The settlement adopts Vitesse's alternative option and creates a process for eligible customers with new load to file a request with the Commission for an increase to the cap. The settlement is acceptable to Vitesse because it creates a path for new load to participate and procure renewable energy, but also sets clear standards that will protect non-participants and the competitive market.

Q. According to the settlement, how will an eligible customer with new load request an expansion to the program cap?

A. The settlement stipulation states that "a customer with 10 aMW or greater of new load" may request Commission approval of an increase to the participation cap, along with a request that the Commission issue a decision within six months of the filing."[12] I understand the customer would be responsible for demonstrating that the customer's proposal complies with the law, the Commission's rules, order conditions, and this settlement. The Fourth Partial Stipulation specifically envisions that the Commission would consider at least three factors: 1) whether the increase "[p]oses no significant risk or cost to non-participating cost-of-service customers," 2) whether the increase "[p]oses no significant impacts to the competitive market, and 3) whether the increase "[a]dvances

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[10] Vitesse/200, Cebulko/6
[11] Vitesse/100, Cebulko/20-21; Vitesse/200, Cebulko/6.
[12] Fourth Partial Stipulation at 2.

the goals reflected in HB 2021[.]"[13] The stipulation recognizes that there may be "[o]ther criteria … [that] demonstrate good cause," including criteria "determined by the Commission."[14]

To inform the customer and assist in its demonstration, the settlement first requires PacifiCorp to provide the customer with an analysis that estimates the impact of the new load on the Company's energy and capacity needs.[15] This analysis will help parties understand the potential impacts of the new load on PacifiCorp's system. I expect the analysis will also help PacifiCorp decide whether to support and potentially join the customer's application when it helps to demonstrate that the established criteria are met. Again, I previously testified that allowing new load to come online under a VRET is in the public interest, so this analysis will inform whether that general expectation is met for a particular customer.

Q. Are the criteria included in the settlement consistent with the criteria you identified in testimony?

A. Yes. In my Opening Testimony, I recommended that the Commission adopt criteria similar to those that the Commission adopted for New Load Direct Access ("NLDA") waivers.[16] In that Order, the Commission talked about allowing an expansion "if we later determine that an individual application to exceed the cap poses no significant risk or

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[13] Fourth Partial Stipulation at 2-3.
[14] Fourth Partial Stipulation at 2-3.
[15] Fourth Partial Stipulation at 2.
[16] Vitesse/100, Cebulko/22.

costs to cost-of-service customers" and presents significant benefits to the system," such as "if an individual application advances the goals reflected in state policy."[17]

Q. Why is it important for the customer to make a showing that increasing the cap poses no significant risk or costs to non-participating customers?

A. To start, minimizing the risk exposure to non-participants was an important criterion identified by the Commission in its order approving Portland General Electric's ("PGE's") VRET[18] and in its order for NLDA.[19] Moreover, as I discussed in my Opening Testimony, a well-designed VRET assigns all costs and benefits to the participants.[20] If a customer is seeking an opportunity outside of the traditional cost-of-service, it must be willing to take on the costs and risks of the program.

Q. Why is it important for the customer to make a showing that increasing the cap poses no significant impacts to the competitive market?

A. Like demonstrating that the program will not significantly impact non-participants, the Commission has identified minimizing impacts to competitive markets as another condition that must be met in both the VRET and NLDA contexts.[21]

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17 Vitesse/100, Cebulko/22 (quoting Docket No. AR 614, Order No. 18-341 at 7).

18 *In re PGE Investigation into Proposed Green Tariff*, Docket No. UM 1953, Order No. 21-091 at 2-3, 12-16 (Mar. 29, 2021).

19 *In re Rulemaking Related to a New Load Direct Access Program*, Docket No. AR 614, Order No. 18-341 at 1 (Sept. 14, 2018).

20 Vitesse/100, Cebulko/7.

21 Docket UM 1953, Order No, 21-091; Docket No. AR 614, Order No. 18-341.

Q. Please discuss PacifiCorp's role in the customer's application, specifically the requirement for the Company to provide analysis on the impact of the new load to its energy and capacity.

A. As indicated above, the Commission is justifiably concerned of potential impacts to non-participants from a VRET. Consequently, a customer must make a demonstration that its new load will not significantly harm non-participants. The utility is best situated to conduct an analysis that identifies how new load will impact its energy and capacity needs based on the current situation of the utility – an analysis that will be the basis of any demonstration on how expanding the cap would impact non-participants. The customer and/or other stakeholders will reserve the right to disagree or supplement the utility's analysis. This is the same information PGE agreed to provide in its VRET, which the Commission approved.

Q. The last specific criteria identified in the stipulation is a requirement for a discussion on how the cap increase advances the goals identified in HB 2021. Why was this requirement included in the settlement?

A. This is an important criterion for demonstrating that increasing the cap is in the public interest, and it is consistent with the Commission's Order approving NLDA. There the Commission stated that "a waiver … may be appropriate if an individual application advances the goals reflected in state policy through elements such as carbon-free generation resources, value-added grids services, and support for system capacity needs or through other means."[22] The settlement provides more specificity regarding how the criterion should be met and tailors it to current circumstances now that HB 2021 has been passed.

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[22] Docket No. AR 614, Order No. 18-341 at 7.

As I testified in my Opening and Rebuttal Testimonies, the passage of HB 2021 is a significant, new development that occurred after the Commission last considered either the VRET design for PGE or NLDA.[23] HB 2021 obligates PacifiCorp and other entities to make their systems' average substantially cleaner. PacifiCorp's decision to title its VRET the Accelerated Commitment Tariff is an appropriate acknowledgement of a VRET in the context of HB 2021. VRET customers are deciding, not whether to have cleaner electricity supply, but *when* to have a cleaner supply and what costs of the transition to *voluntarily* absorb. This point bears emphasis: utilities will incur costs to transition, and VRET customers *choose* to absorb incremental costs they could otherwise avoid or defer. Absent a VRET, PacifiCorp's costs to transition will largely be socialized across Oregon ratepayers.

Q. Why does the settlement allow for the filing to be reviewed based upon "[o]ther criteria as determined by the Commission or raised by stakeholders to demonstrate good cause"?

A. This criterion is necessarily ambiguous, but the intent is to acknowledge that stakeholders or the Commission may identify additional criteria that were not raised in this proceeding. It is worth identifying that in my Rebuttal Testimony, I requested other parties propose additional criteria – beyond the criteria in Order No. 18-341 and adopted in this settlement – but no other party proposed specific criteria.[24] However, the failure to identify other criteria in this proceeding or in the settlement does not prevent other stakeholders from raising additional criteria if a filing to increase the cap is made.

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[23] Vitesse/100, Cebulko/20, Vitesse/200, Cebulko/6.

[24] Vitesse/200, Cebulko/12; *see, e.g.*, PAC/2700, McVee/4-6 (discussing Vitesse's proposed criteria and not recommending any additional criteria).

Similarly, the customer and other stakeholders reserve the right to argue that any criteria raised by another stakeholder is not relevant or does not warrant rejecting the filing.

Q. Finally, in your Opening Testimony, you advocated for a 90-day review period.[25] Why did Vitesse agree to a 180-day review period?

A. This was a major concession from Vitesse for purposes of settlement. Customers need reasonable certainty that there is a path for powering new operations with additional, clean energy resources. As I stated in my Rebuttal Testimony, developing a large capital-intensive project requires a comprehensive alignment of stakeholders and numerous inputs including land, water/wastewater, network environmental/permitting, energy, tax, construction, and operations labor. Given Vitesse's commitment to offset new load with incremental carbon-free generation, Vitesse cannot select a location and then hope a case-specific proceeding with a protracted evaluation works out. 180 days provides less certainty than my initial recommendation, which was based on the time period the Commission had approved for PGE's VRET.[26] However, it should be sufficient. The intention for agreeing to 180 days is that there should be no need for additional extensions beyond the 180 days.

IV. CUSTOMER SUPPLY OPTION

Q. Could you please summarize for the Commission your position regarding the Customer Supply Option ("CSO")?

A. Yes. In my Opening Testimony, I recommended that the Commission "modify the ACT to allow a customer to bring its own [Power Purchase Agreement ("PPA")], as is

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[25] Vitesse/100, Cebulko/22.

[26] Vitesse/100, Cebulko/22 (citing Docket No. UM 1953, Order No. 21-091 at 16).

currently permitted via PGE's CSO, to be approved by the Commission within 90 days."[27] I also noted that "enabling participants to select their own PPAs can make green tariff programs, including VRETs, more attractive for participants by enabling them to select projects that best meet their needs, as recognized by PGE's CSO."[28] For example, "Meta is a large global business with a sophisticated energy program that partners with utilities and renewable energy developers across the country. Meta may be able to identify a PPA that better meets Vitesse's needs and the requirements of the ACT."[29]

Q. Prior to when the parties reached a settlement, what was your understanding of other stakeholders' positions on the CSO?

A. Staff, Northwest & Intermountain Power Producers Coalition ("NIPPC"), and Walmart supported a CSO, while PacifiCorp was the only entity that opposed, in part, a CSO.[30] Staff testified that "the CSO option provides additional value to potentially interested customers."[31] PacifiCorp opposed "a 'blanket' CSO" and even stated: "If the Commission believes that any VRET should include a CSO, it should reject PacifiCorp's ACT so that PacifiCorp can further evaluate how to incorporate that option in a way that is acceptable to the Company and protects non-participating customers."[32] However, PacifiCorp was "open to potentially allowing for 'case-by-case analysis of a CSO.'"[33] My understanding is that PacifiCorp was specifically concerned about managing the risk

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27 Vitesse/100, Cebulko/26.
28 Vitesse/100, Cebulko/27.
29 Vitesse/100, Cebulko/26-27.
30 Vitesse/200, Cebulko/13-14; Walmart/200, Kronauer/1-3.
31 Vitesse/200, Cebulko/13 (quoting Staff/500, Bolton/9).
32 PAC/2700, McVee/7-8.
33 Vitesse/200, Cebulko/14 (quoting PacifiCorp/1700, McVee/6).

of significant interconnection costs.[34] I continue to believe that PacifiCorp's concern is overstated and can be effectively managed by an effective Commission review process.[35]

Q. Does the proposed Fourth Partial Stipulation resolve this issue?

A. Yes. The proposed Fourth Partial Stipulation establishes a CSO and an effective review process for both PacifiCorp and the Commission to follow.[36] Vitesse views this outcome as a meaningful improvement to PacifiCorp's original ACT and a significant win for interested VRET customers.

Q. Please describe the review process in the proposed Fourth Partial Stipulation.

A. In brief, there is up to a three-step process in which the customer brings its proposed CSO resource: 1) first to PacifiCorp; 2) then to an informal stakeholder informational meeting, and 3) finally to the Commission for review. PacifiCorp's approval is not required to advance to the later steps. PacifiCorp may accept a proposal. However, "PacifiCorp retains the right to reject the resource if the participant, utility, and developer cannot agree on risk allocation or the structure of such shifts undue costs to non-participating customers."[37] It is my understanding that this language effectively provides PacifiCorp the same power that the Commission previously gave PGE, when the Commission ordered that "PGE will maintain final contract approval [in PGE's CSO], but may only object to qualifying PPAs to avoid shifting costs and risks onto non-participating

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34 *See* Vitesse/200, Cebulko/14.
35 *See* Vitesse/200, Cebulko/14-15.
36 Fourth Partial Stipulation at 5-6.
37 Fourth Partial Stipulation at 5.

customers or PGE shareholders."[38] The Stipulation notes that interconnection costs are one of the items that PacifiCorp will review.[39]

There is also a mandatory informal stakeholder informational meeting. The Stipulation provides that "[p]rior to filing any request with the Commission, PacifiCorp and the participating customer shall hold an informational meeting for interested stakeholders to discuss the risk allocation and structure of the proposal, and the interested stakeholders may raise concerns."[40]

Vitesse views the stakeholder meeting as an important informational event. It provides an opportunity to educate other stakeholders about the resource and upcoming Commission filing and provides a space for stakeholders to identify issues or concerns. The customer, developer, or PacifiCorp could decide to propose changes based on the discussion, although no changes would be required by the meeting alone. Providing stakeholders with an opportunity to review the key components should help improve the filing and expedite the review and approval of the filing.

Finally, the customer must bring its CSO resource to the Commission for approval. Again, this can occur with or without PacifiCorp's support. Vitesse understands this filing for approval to be consistent with the Commission's established practice for PGE's CSO.[41]

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[38] *See* Vitesse/200, Cebulko/15 (quoting Docket No. UM 1953, Order No. 20-036 at 3 (Jan. 31, 2020)).

[39] Fourth Partial Stipulation at 5.

[40] Fourth Partial Stipulation at 6.

[41] *See* Vitesse/200, Cebulko/14-15 (supporting a Commission review process); *see, e.g.,* Docket No. UM 1953, Order No. 21-091 at 17 (discussing the Commission's review

Q. Does the proposed Fourth Partial Stipulation have other language on a CSO?

A. Yes, the proposed Fourth Partial Stipulation obligates PacifiCorp to "post required terms for a customer supplied PPA."[42] This is important information for the developer and customer to understand what type of resources and contract will be acceptable to PacifiCorp. However, the developer and customer will retain the right to bring a dispute to the Commission if they believe the terms are unreasonable or unworkable.[43] It also explains that, at minimum, "[a] customer proposing an ACT program resource must take the entire output of a facility and take variable annual delivery, and PacifiCorp will not procure replacement RECs due to under-delivery."[44] I address this separately below in a section on treatment of RECs.

V. CUSTOMER SHARE IN RESOURCES

Q. Could you please summarize for the Commission your position regarding the "ACT Customer share" in the proposed Fourth Partial Stipulation?

A. Yes. Vitesse initiated discussion on this change to PacifiCorp's ACT and fully supports the Fourth Partial Stipulation's resolution of this issue.

Originally, PacifiCorp proposed to allow participating customers to subscribe to a guaranteed annual delivery volume.[45] Vitesse recommended allowing customers the

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process for CSO applications where customers have a load greater than 5 aMW but less than 10 aMW).

42 Fourth Partial Stipulation at 6.

43 While I am not a lawyer and I am not providing a legal opinion, it is my understanding that any dispute would be limited to the Commission's jurisdiction over the ACT, and not conflict with federal jurisdiction over wholesale energy transactions.

44 Fourth Partial Stipulation at 6.

45 Vitesse/100, Cebulko/29 (citing Exhibit Vitesse/102, Cebulko/21 (PacifiCorp Response to OPUC Data Request No. 315)).

alternative option of assigning participants "a certain percentage of the output of a facility and allow them to take variable annual delivery volumes" because this approach "better assigns the costs and benefits of a resource."[46] I understand a variable energy option "is consistent with the design of PGE's VRET which allows customers to choose a percentage of, or the entire, project."[47]

The Fourth Partial Stipulation essentially adopts Vitesse's alternative proposal as the main program design. The Fourth Partial Stipulation eliminates the option for the customer to select a fixed guaranteed annual delivery volume. The ACT Customer share (section 13) provides that "[p]articipants shall take a percentage of variable output from ACT program resources based on their proportional percentage of customer participating load to total load participating in a resource or portfolio of resources."[48]

Q. How will the process work for customers to select a share of the resource?

A. Assuming the Commission approves the ACT, PacifiCorp will solicit interest from eligible customers and proceed to acquire a resource, or portfolio of resources, sufficient to meet that interest. This first "tranche" will not be a CSO but will be a PacifiCorp identified resource that PacifiCorp will size to meet the expressed interest from self-identified potential participants. Vitesse does not intend to participate in this first tranche

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[46] Vitesse/100, Cebulko/29-30.

[47] Vitesse/200, Cebulko/15-16 (citing *See Schedule 55 Large Nonresidential Green Energy Affinity Rider (GEAR)*, Portland General Electric Company (Oct. 14, 2021), https://assets.ctfassets.net/416ywc1laqmd/Cisc2UrDoVmUBwV1fqVqb/e107aedaceaf5b5a21d69d07dcbf1453/Sched_055.pdf).

[48] Fourth Partial Stipulation at 3.

because, among other reasons, Vitesse prefers to have an entire resource sized to its renewable energy need and can bear all the costs and benefits of the resource.

Because current interest may not fill the program, PacifiCorp can subsequently acquire a resource or portfolio of resources for one or more eligible customers in a subsequent tranche. If Vitesse elects to take service under the ACT, then Vitesse would participate in this second or later "tranche." Vitesse would seek to have a specific company identified or CSO resource sized to its load.

Thus, in any given tranche of resource(s), the participating customer(s) will obtain a percentage of variable output proportional to their load within that tranche (e.g., one customer will subscribe to 100% of that customer's resource variable output, two customers with equal load sizes will each subscribe to 50%, etc.).[49] In other words, customers will pay the costs and receive the benefits associated with their specific resource or resources. The customers will not be charged for, or benefit from, subsequent VRET resources that are procured to meet other VRET customers' interest. This is a meaningful improvement that ensures a large customer can bear all the costs and benefits of a specific resource.

Q. What was PacifiCorp's stated response to Vitesse's proposal prior to the stipulation?

A. PacifiCorp opposed having a variable energy option (now the ACT Customer share) because of concerns about securities regulations. PacifiCorp stated that "it could create some additional issues related to securities regulation if the amount is not fixed at the

[49] *See* Fourth Partial Stipulation at 5.

time the customer commits to participation."[50] However, PacifiCorp also stated that "[i]f a single entity is taking the entire output of a facility, the proposal may be workable, and PacifiCorp is willing to discuss specific options with customers if that will assist with the customer's goal and further state energy policy."[51]

Q. How does the Fourth Partial Stipulation address PacifiCorp's concerns?

A. The proposed Fourth Partial Stipulation addresses PacifiCorp's concerns by making the ACT "contingent upon PacifiCorp receiving a no-action letter from the Securities and Exchange Commission [("SEC")] that the design of this program does not involve the sale of securities."[52] "If PacifiCorp does not receive a no-action letter from the [SEC], the company will develop and file a new program proposal."[53]

Q. What are Vitesse's expectations about how the no-action contingency will affect the ACT?

A. Vitesse supports the Fourth Partial Stipulation but notes that this contingency is a significant compromise. Our hope is that PacifiCorp can file the no-action letter with the SEC within two months. It is not clear how long it will take for the SEC to respond to PacifiCorp's request for a no-action letter, and thus this could significantly delay the initiation of the program. However, our hope is that SEC promptly reviews and provides a no-action letter by the end of the year or soon thereafter, which would result in no or minimal delays.

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50 Vitesse/200, Cebulko/16 (quoting PAC/1700, McVee/19).
51 Vitesse/200, Cebulko/16 (quoting PAC/1700, McVee/20).
52 Fourth Partial Stipulation at 4.
53 Fourth Partial Stipulation at 4.

Other than the delay, Vitesse does not expect issues. As described in my Rebuttal Testimony, "I am not an attorney, but my understanding is that there are ways to satisfy" PacifiCorp's concerns. I described how PGE faced the same design question and the SEC has already addressed the issue for some community solar programs.[54]

Vitesse is confident that PacifiCorp can obtain a no-action letter. However, if that does not happen, then PacifiCorp will file a "new program proposal." PacifiCorp will not wait until its next general rate case, but will promptly file the new program proposal soon after any unfavorable response from the SEC. Vitesse expects that the filing would be made within two months. There has been considerable design work in this proceeding, including multiple rounds of testimony, and we expect that PacifiCorp will be able to expeditiously file a new program proposal. While not addressed in the Stipulation, our hope would be that PacifiCorp's new program proposal would rely as much as possible on core elements of the Stipulation. If such a filing is necessary, then Vitesse recommends that the Commission expedite a proceeding for a new VRET so that customers have a viable program.

VI. COMPETITIVE BIDDING RULES

Q. Could you please summarize for the Commission your position regarding the Competitive Bidding Rules ("CBRs")?

A. Yes. In my Opening Testimony, I stated that "it is in the public interest for resources procured by, or developed by, the utility to be subject to the CBRs."[55] I also testified that PacifiCorp should be able to leverage its recent Request for Proposals ("RFP") "to

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[54] Vitesse/200, Cebulko/16-17.
[55] Vitesse/100, Cebulko/25.

identify the best resource(s) available from those not selected for the non-participating cost-of-service customers" in a VRET.[56] In my Rebuttal Testimony, I noted that PacifiCorp agreed with me, while NIPPC's position was that "PacifiCorp must formally seek a waiver for the 2022AS RFP to be used."[57] I concluded that "I am not an expert on Oregon CBRs, but I recognize and understand NIPPC's point and would support a waiver of the CBRs in the Commission's Order, if the Commission deems it necessary."[58]

Q. Does the proposed Fourth Partial Stipulation resolve this issue?

A. Yes. I believe that the Parties were all in agreement that PacifiCorp could use the 2022AS RFP prior to the entering into a settlement.[59] The proposed Fourth Partial Stipulation memorializes that agreement and states that:

> The Stipulating Parties agree that the Commission's competitive bidding rules, including the ability to apply for an exemption or seek a waiver, should apply and that PacifiCorp's 2022 All-Source Request for Proposal (2022AS RFP) can be used to identify resources, provided negotiations and Commission approvals are completed prior to the bid validity date on November 21, 2023.[60]

I understand this language to mean that the parties agree PacifiCorp can leverage its recent RFP without specifically filing a waiver request, so long as the "negotiations and Commission approvals" conclude prior to the bid validity date, after which PacifiCorp would need to follow the CBRs, including making a waiver request as needed.

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56 Vitesse/100, Cebulko/25-26.
57 Vitesse/200, Cebulko/17-18 (citing PAC/1700, McVee/14 and NIPPC/100, Gray/3).
58 Vitesse/200, Cebulko/19.
59 PAC/2700, McVee/13 (citing PacifiCorp/1700, McVee/14; Staff/2200, Bolton/12; Vitesse/200, Cebulko/17–19; NIPPC/200, Gray/2). Other parties did not address this issue.
60 Fourth Partial Stipulation at 4-5.

VII. TREATMENT OF RECS

Q. Was there an issue about unbundled Renewable Energy Credits ("RECs") in this docket?

A. Yes. I addressed this in my Reply Testimony.[61] In brief, PacifiCorp's initial proposal was to provide a fixed subscription amount, including a fixed REC amount based on the performance guarantee of the resource.[62] If an ACT resource under-delivered, PacifiCorp intended to "procure unbundled RECs for participants" in order to "mitigate[e] risk for participants" of their needs not being met.[63] NIPPC expressed concern with this language being potentially inconsistent with the Commission's second VRET condition,[64] which requires that VRETs "include only bundled REC products."[65] I previously testified that I understood this as a concern about "a circumstance in which a resource is regularly under-performing, and the Company and participant are leaning on unbundled RECs."[66] I also noted this is not a desirable outcome for a participating VRET customer, and so Vitesse would expect consistent underperformance to result in remedial measures or PacifiCorp procuring new resources instead of persistent use of unbundled RECs.[67] I recommended that PacifiCorp add language to the ACT to clarify this scenario, which PacifiCorp agreed with and requested in its Surrebuttal Testimony.[68]

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61 Vitesse/200, Cebulko/19-21.
62 *E.g.*, PAC/1700, McVee/20.
63 *E.g.*, PAC/1700, McVee/20.
64 NIPPC/100, Gray/7.
65 Docket No. UM 1953, Order No. 21-091 at 6.
66 Vitesse/200, Cebulko 20.
67 Vitesse/200, Cebulko/20-21.
68 Vitesse/200, Cebulko/21; PAC/2700, McVee/3, 18-20.

Q. Does the Fourth Partial Stipulation resolve this issue?

A. Yes. The stipulation essentially adopts my earlier recommendation and clarifies the scenario where a resource underperforms. It states that "PacifiCorp shall take reasonable efforts to begin to procure replacement resource(s) if an ACT program resource defaults under the PPA, so that replacement resource(s) can be available as soon as practicable. PacifiCorp will coordinate with participating customers if the PPA is terminated."[69] For PacifiCorp procured resources, the settlement stipulates that "RECs resulting from a resource's performance above any performance guarantee shall be banked on behalf and for the benefit of participants in the event of future underperformance."[70] This approach is analogous to a banking program associated with a renewable portfolio, which will ensure that 100 percent of the customer's load is covered by the variable energy from a renewable resource on an annual basis. The settlement further stipulates that PacifiCorp may retire surplus RECs if the resource is demonstrating consistent performance. Although there is a risk of underperformance and no banked RECs in the first year, Vitesse is comfortable with this risk because the idea is that the customer bears the costs and risks associated with the variable resource. That said, Vitesse notes that if a developer has defaulted under its PPA and owes damages, the participant(s) would be entitled to some amount of damages, including monetary compensation or interim replacement RECs that a developer provides. The important point is that neither

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69 Fourth Stipulation at 3-4.

70 Fourth Stipulation at 4.

PacifiCorp nor ratepayers would be expected to incur any losses in order to compensate a VRET customer for these damages, but only the defaulting developer.

Q. What about underperformance in the context of the CSO?

A. The stipulation largely treats underperformance between CSOs and company supplied resources similarly, but also notes that for CSOs "PacifiCorp will not procure replacement RECs due to under-delivery."[71]

Q. How do you interpret this provision to work?

A. In the CSO context, Vitesse would envision that, as part of the contract negotiations, the participating customer would work with PacifiCorp to include reasonable contract provisions to address the specific problem of persistent under-delivery (i.e., a default or termination). For example, the contract could specify that the CSO developer is responsible for procuring replacement RECs due to under-delivery. The developer and participating customer might be open to an alternative approach in which the customer is paid damages and procures its own replacement RECs. The stipulation simply clarifies that neither PacifiCorp nor ratepayers would be obligated to compensate a participating customer for the risk of under-delivery from a CSO resource.

VIII. PROGRAM PARTICIPATION

Q. Could you please describe the process outlined in the settlement for ACT program participation?

A. Yes. According to the settlement:

> PacifiCorp will solicit interest in an initial offering to customers to determine participation levels following approval of the ACT. Following this initial offering, PacifiCorp may work with individual large customers to

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[71] Fourth Partial Stipulation at 6.

> identify specific resources for those customers. PacifiCorp may also make another offering to identify multiple customers wishing to participate in incremental renewable resources. Each portfolio (initial or subsequent) will receive the costs and benefits from those resources identified for the customers participating in those resources, and not receive the costs or benefits of other resources. Administrative costs will be socialized across all ACT program participants.[72]

Vitesse understands that there will be a two-step process, where the Company will first solicit interest from customers who would subscribe to a percentage or a resource or portfolio of resources. In the second step, PacifiCorp may repeat the first step, while PacifiCorp simultaneously will work with individual customers who would subscribe to the full output of a specific resource. Vitesse is likely to participate in the second step of the process.

Q. Please elaborate on Vitesse's understanding and why the second step makes sense for Vitesse.

A. Vitesse's and Meta's corporate energy goals, as explained in Section III, emphasize that its investments are "additional." In this context, it is important that Vitesse's investments do not displace renewable investments that would have occurred absent Vitesse's participation. The first offering is focused on providing an opportunity for smaller, eligible customers to participate. Vitesse expects that the best way for it to ensure that its investment is "additional" is to participate in a subsequent offering during which the Company and Vitesse can work together to both identify a resource specific for Vitesse as well as mitigate potential conflict with smaller customers on program availability.

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[72] Fourth Stipulation at 4.

Q. What is your understanding as to when a customer can bring forward a CSO for approval by the Commission?

A. It would not be pragmatic for a customer to bring a CSO proposal to the Company prior to it fully developing its initial program. My understanding is that a customer may bring forward a CSO any time after PacifiCorp's initial offering.

IX. WORKSHOPS

Q. Could you please discuss the workshop requirement in the settlement?

A. Yes. The settlement requires PacifiCorp to hold one workshop by December 31, 2023, to discuss 1) "[i]ssues encountered during program implementation," and 2) "[p]otential modifications to help refine the program."[73] Having a single workshop to discuss these topics could help inform all parties on future iterations of the program.

Q. Were future workshops previously discussed in the proceeding?

A. Yes. PacifiCorp's Surrebuttal Testimony asked that the Commission "[a]llow PacifiCorp to hold future workshops to develop requirements for a CSO, the potential for percentage-based facility output options for a small number of customers to participate in a shared resource, and other refinements to the program."[74] I understood this statement, which PacifiCorp did not expand upon in its testimony, to essentially ask the Commission to defer making a decision on unresolved issues like the CSO and customer share design. The stipulation resolves the issues like CSO and customer share design and avoids further delay. That the settlement only requires one workshop and only on issues encountered and possible refinements is a testament to the work of the parties in this case to resolve

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73 Fourth Partial Stipulation at 5.
74 PAC/2700, McVee/3.

unanswered program design questions and deliver a well-designed VRET to PacifiCorp's customers.

X. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.