



RICHARD G. LORENZ  
ADMITTED IN OREGON AND WASHINGTON

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November 1, 2022

**VIA ELECTRONIC FILING**

Public Utility Commission of Oregon  
Filing Center  
PO Box 1088  
201 High Street S.E., Suite 100  
Salem, OR 97308-1088

**Re: Docket UE 399 – In the Matter PACIFICORP, d/b/a Pacific Power  
Request for a General Rate Revision**

Attention Filing Center:

Enclosed for filing in the above referenced docket are Errata Sheets for NewSun Energy, LLC's (NewSun) Testimony in Opposition of the Fourth Partial Stipulation. These Errata Sheets are intended to correct errors discovered after the opposition testimony was filed.

NewSun apologizes for the errors and submits these Errata Sheets to correct the record. The following specific changes have been made:

1. NewSun/100, Stephens/1, clarifies that Mr. Stephens has previously filed prefiled written testimony in front of the Commission, as well as previously submitting written and oral comments to the Commission.
2. NewSun/100, Stephens/2, corrected typographical errors on line 4 and in line 14.
3. NewSun/100, Stephens/5, corrected typographical error on line 22.
4. NewSun/100, Stephens/9, corrected typographical error on line 19.
5. NewSun/100, Stephens/10, corrected typographical errors on line 10 and line 11.
6. NewSun/100, Stephens/21, corrected typographical error on line 5.

This filing includes both a redline version and a clean version of the above to clarify the corrections and for the convenience of the parties and Commission.

Please contact this office with any questions.

Very truly yours,

A handwritten signature in black ink that reads "Richard Lorenz". The signature is fluid and cursive, with a large loop at the end.

Richard G. Lorenz

Enclosures

REDLINE VERSION

1 **I. INTRODUCTION AND SUMMARY**

2 **Q. PLEASE STATE YOUR NAME AND OCCUPATION.**

3 A. My name is Jake Stephens, CEO and founder of NewSun Energy LLC (“NewSun”), a  
4 company with offices and employees in Bend, Oregon and Tucson, Arizona. NewSun is a  
5 power plant development group focused on renewable energy, primarily photovoltaic solar,  
6 and surrounding opportunities. NewSun currently works in several western U.S. states, and is  
7 currently focusing its efforts in Oregon. Founded in 2015, NewSun’s team has experience in  
8 the successful development of several square miles of solar projects, as well as decades of  
9 experience in project permitting, finance, interconnection, transmission, operations, and  
10 development of dozens of solar, geothermal, and natural gas facilities, both domestic and  
11 international.

12 **Q. PLEASE IDENTIFY THE PARTY ON WHOSE BEHALF YOU ARE TESTIFYING.**

13 A. I am testifying on behalf of NewSun.

14 **Q. HAVE YOU TESTIFIED IN FRONT OF THE PUBLIC UTILITY COMMISSION OF**  
15 **OREGON BEFORE?**

16 A. [Yes, I previously submitted testimony in Docket UM 1931](#) ~~No, this will be my first time~~  
17 ~~providing written testimony~~ to the Public Utility Commission of Oregon (“Commission”). I  
18 have ~~also, however,~~ participated and submitted oral and written comments in other  
19 Commission proceedings, and appeared before the Commission to testify at public meetings.

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A. I discuss my review of the Forth Partial Stipulation in this docket and PacifiCorp’s proposed  
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23 Commitment Tariff, and PacifiCorp’s proposed Schedule 273, in particular to discuss a

1 mixture of consequential issues in proposed PacifiCorp's tariff language that likely have  
2 impacts to costs for not only VRET participants, but broader ratepayer cost impacts, as well as  
3 effects on the VRET program's viability, and customer exposures related to these issues,  
4 including as it relates to implications for (and/or side-stepping of) other competitive processes  
5 and protections. Subtle changes proposed inappropriately conflate various types of defaults,  
6 including conflating consequences for non-power-output related defaults with actual facility  
7 performance related defaults, with exposure of customers and generators to extreme and  
8 inappropriate consequences. These terms ultimately may create, or even require, draconian  
9 consequences and create backdoor PacifiCorp rights, and even *obligations* to take  
10 disproportionate-to-context actions (such as termination of an entire facility for marginal  
11 performance issues and entire replacement thereof), including abilities to assert rights and  
12 obligations to do so, and to take actions in non-cost-effective, non-practical, time compressed  
13 manners, and/or outside of competitive processes and oversight, without even clarity of  
14 transparency obligations to customers as to consequences ~~them~~ before such actions are  
15 implemented, much less their having explicit recourse or abilities to evaluate and/or veto cost  
16 impacts, or perhaps even opt out, in an entirely voluntary program. These features will not  
17 only likely challenge, or entirely undermine, financeability for non-IOU-owned assets, but  
18 likely adversely affect RFP bids and VRET program customer pricing which interact with PPA  
19 terms and bidding criteria, in particular the mechanics, consequences, and remedies for various  
20 types of defaults, where such terms and conditions may, or are even likely to, become  
21 incorporated in those venues based on the tariff language the Commission may bless here, as  
22 VRET program terms and *requirements*, in the rate case.

1 non-standard and/or inappropriate and PPA-price and facility-financing consequential PPA  
2 terms on VRET resources (and even non-VRET resources) contracted from third-party  
3 developers with respect to defaults and associated risks or requirements of PPA termination,  
4 and further rights and/or obligations created for PacifiCorp to then secure replacement  
5 resources, for entire facilities, irrespective of the nature of defaults or alternative remedies  
6 which might be available. As explained in greater detail below, requiring third-party wholesale  
7 power suppliers to accept such non-standard or risk amplifying PPA terms will stifle  
8 competition from third-party developers, reduce viable bidders and resource options, raise  
9 resulting VRET program costs, and favor PacifiCorp's self-build alternatives—along with  
10 similar implications for non-VRET resource procurement due to the *de facto* ties and interfaces  
11 of associated RFP process. They also open the door for PacifiCorp to unilaterally acquire  
12 unnecessary replacement VRET Resources in a manner that is neither regulated nor subject to  
13 competitive procurement, by creating circumstances and obligations under Commission  
14 approved tariff language implying obligations to do so, but without appropriate explicit checks  
15 and balances and, at a minimum, ambiguity which could be exploited for PacifiCorp self-  
16 dealing at customer expense, outside appropriate oversight, and which banks financing projects  
17 (and thus the developers bidding projects) which would need to interpret in the most adverse  
18 manner, i.e. attaching maximal risk and cost thereto.

19 Based on the forgoing, I recommend that the Commission only approve the Fourth  
20 Partial Stipulation and corresponding Schedule 273 subject to the condition that PacifiCorp (1)  
21 **redact** from Schedule 273 **and prohibit** any language implying that “defaults” generally  
22 should or will result in termination or replacement of a VRET Resource or PPA resource, a  
23 severe consequence that VRET tariff should be silent upon lest unintended consequences occur

1 **Q. PLEASE SUMMARIZE YOUR CONCERNS WITH THE FOURTH PARTIAL**  
2 **STIPULATION.**

3 A. The current version of Schedule 273 reflects an assumption that (a) any non-delivery of power  
4 by a VRET Resource is an event of default of the underlying PPA, and (b) that *any* default of  
5 *any type* is (i) grounds for replacement actions to commence; (ii) grounds for PPA termination;  
6 (iii) solely are energy or output related (by implication of this course of action being required  
7 or appropriate); (iv) *best* remedied by these sort of replacement and termination actions; (v)  
8 should result in replacement of an *entire* VRET resource; (v) that shortfalls relative to need  
9 only occur due to a VRET resource deficiency; (vi) alternatives are not available which may be  
10 superior; (vii) there should be no obligation to evaluate other alternatives; (vii) such actions  
11 should be taken irrespective of cost impacts, never mind timing considerations, customer  
12 preferences, or surrounding considerations, such as whether PacifiCorp has by the time such  
13 events occurred sufficiently decarbonized under other regulatory obligations as to mitigate the  
14 customer preference to take a specific remedial action at all, much less at a potential premium  
15 (much less a non-transparent obligation to take whatever cost is unilaterally “revised” by  
16 PacifiCorp as allowed by tariff); and (viii) should result in obligations and rights of PacifiCorp  
17 to take actions of these and *only* these types, with no obligations for consideration of  
18 alternatives or rights of customers to understand basic aspects of the deficiencies nor proposed  
19 remedies affecting them. PacifiCorp’s changes to Schedule 273 ~~to~~ assume that the remedy for  
20 any non-delivery of power from a VRET Resource is termination and replacement of the  
21 underlying PPA defies common sense, oversight, and basic transparency, irrespective of  
22 consequences or costs, even if the deficiency might just be due to a couple bad weather years, a  
23 facility might be proposing or implementing, or there is just a long-term underperformance of a

1 fraction of the targeted output level; the presumption that *buying a whole new power plant*,  
2 rather than offsetting some incremental shortfall, is absurd, as it would reduce resources  
3 available by most of a power plant, thus increasing the size and challenges of replacement  
4 procurement; PacifiCorp lumps all performance shortcomings into the same mega-cure  
5 solution *requirement* (not *option*). As drafted, Schedule 273 also appears to authorize—if not  
6 compel—PacifiCorp to terminate a PPA with a VRET Resource for *any* event of default no  
7 matter how minor, lumping together *in the tariff* a conflation of equality for *all* default types.  
8 This is categorically absurd, putting billing disputes in the same tariff-required remedial action  
9 rights for PacifiCorp as fraud, negligence, or complete facility failures; such should not be  
10 permitted at all, much [less](#) memorialized in a tariff to then bias and inform future RFP terms  
11 and PPA negotiations for VRET and non-VRET resources. Taken together, these terms  
12 essentially require a renewable developer to guarantee the output of a VRET Resources to any  
13 standard PacifiCorp might require, irrespective of interactivity with other PPA terms, and  
14 create a negotiation position for PacifiCorp in future PPAs that all PPA defaults have risk of  
15 the same most-draconian, and most-unfinanceable consequences. These terms are not only  
16 commercially unreasonable, they are contrary to industry standards wholesale power contract  
17 terms and basic common sense, as well as undermine the competitive bidding and PPA  
18 negotiation process and basic financeability of RFP bidder facilities (and/or create cost  
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20 less competitive solicitations, bias towards PacifiCorp owned resources (which will not in  
21 practice face the same consequences and risks of a PPA counterparty which must finance its  
22 facilities and may not grant itself exemptions).

1 PPA instead. In that docket, the Commission correctly acknowledged that such a provision  
2 imposed on PPA resources but not on utility-owned resources (which can later request  
3 recovery of actual costs of performance) could mean that customers bear more risk of utility  
4 asset underperformance than PPA asset underperformance and therefore a potential advantage  
5 for utility-owned resources in RFP selection.<sup>2</sup> The Commission ultimately declined to require  
6 use of a minimum availability guarantee, but allowed that term to be negotiated among the  
7 parties and directed the independent evaluator to examine and report on whether PacifiCorp’s  
8 insistence on this provision resulted in a potential advantage for owned resources. I have  
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10 PPA negotiations to insist on its preferred performance guarantee, default, and termination  
11 language, and that this will drive up the cost of PPA resources, allowing PacifiCorp’s own  
12 more expensive resources to become the lower cost option.

13 **Q. ARE THE NON-STANDARD DEFAULTS AND TERMINATION RIGHTS**  
14 **MANDATED BY SCHEDULE 273 NECESSARY TO PROTECT PARTICIPATING**  
15 **CUSTOMERS?**

16 **A.** No. The revised Schedule 273 may at first glance appear to be protective of participating  
17 customers by mandating that VRET Resources agree to a *de facto* “performance guarantee.”  
18 Upon examination, however, the proposed language is at best superfluous, and will likely be  
19 harmful to participating customers. The language is superfluous because PacifiCorp will still  
20 have all of the rights and remedies reflected in negotiated PPA terms regardless of whether  
21 those PPA terms are dictated by its retail tariff. But by insisting on terminating and replacing a

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<sup>2</sup> See Docket No. UM 2193, Order No. 22-130 at 9-10 (Apr. 28, 2022).



CLEAN VERSION

**I. INTRODUCTION AND SUMMARY**

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