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May 17, 2024

VIA E-MAIL TO

Public Utility Commission of Oregon
Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: Docket No. 2322 - *Pilot Rock Solar 1, LLC et al. v. PacifiCorp, dba Pacific Power.*

Attached for filing in the above-referenced docket, please find PacifiCorp's Answer, Affirmative Defenses and Counterclaims.

Please contact this office with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Cole Albee". The signature is written in a cursive style and is positioned above a horizontal line.

Cole Albee
Paralegal
McDowell Rackner Gibson PC

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2322

PILOT ROCK SOLAR 1, LLC;
PILOT ROCK SOLAR 2, LLC;
TUTUILLA SOLAR, LLC;
BUCKAROO SOLAR 1, LLC; and
BUCKAROO SOLAR 2, LLC,

Complainants,

v.

PACIFICORP, d/b/a PACIFIC POWER,

Respondent.

Pursuant to ORS 756.500.

**PACIFICORP'S ANSWER,
AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS**

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I. INTRODUCTION

1 In accordance with OAR 860-001-0400(4)(a), and the Ruling issued by Administrative
2 Law Judge Katharine Mapes on April 18, 2024, PacifiCorp, dba Pacific Power submits this Answer
3 to the First Amended Complaint (Complaint) filed on April 17, 2024, by Pilot Rock Solar 1, LLC
4 (PRS1), Pilot Rock Solar 2, LLC (PRS2), Tutuilla Solar, LLC (Tutuilla), Buckaroo Solar 1, LLC
5 (Buckaroo 1), and Buckaroo Solar 2, LLC (Buckaroo 2) (collectively, the Complainants or
6 Sunthurst).¹

7 Each of Sunthurst's projects has an executed interconnection agreement with PacifiCorp.
8 Under the terms of the originally executed agreements, as well as several of the amended
9 interconnection agreements, each of the projects would be interconnected and in-service today—
10 if Sunthurst had fulfilled its obligations under the contracts. Instead, Sunthurst has repeatedly and
11 persistently failed to honor its contractual commitments by failing to make required progress
12 payments that allow PacifiCorp to commence and continue interconnection work on behalf of the
13 Sunthurst projects. As a result of Sunthurst's repeated breaches, on numerous occasions
14 PacifiCorp could have sought to terminate the interconnection agreements. PacifiCorp, however,
15 worked diligently and in good faith with Sunthurst to amend the agreements in response to
16 Sunthurst's repeated requests, as well as in response to a complaint filed by Sunthurst that was
17 dismissed with prejudice by the Commission in docket number UM 2118. In total, PacifiCorp has
18 issued 12 amended interconnection agreements that primarily extended milestone dates at

¹ Each of the five projects are wholly owned by Sunthurst Energy, LLC. *See Pilot Rock Solar 1, LLC et seq. v. PacifiCorp, dba Pacific Power*, Docket No. 2322, First Amended Complaint at n.1 (Apr. 17, 2024) (*hereinafter*, First Am. Compl.).

1 Sunthurst’s request and to accommodate Sunthurst’s need for additional time to interconnect its
2 projects.

3 The genesis of the current dispute is a request by Sunthurst on March 29, 2023, to yet again
4 amend its interconnection agreements to delay its payment obligations. When Sunthurst made its
5 request, it was actively in breach of each of the five interconnection agreements. PacifiCorp agreed
6 to extend the progress payment dates and issued amended interconnection agreements with the
7 extended payment dates. Sunthurst executed the amended interconnection agreements without
8 objection.

9 Consistent with its prior actions, when the payments became due—under the schedule
10 Sunthurst proposed—Sunthurst breached its agreements rather than making the required
11 payments. For the first time in the lengthy history of these Sunthurst projects,² PacifiCorp issued
12 notices of breach to Sunthurst, which provided it 60 days to cure the breach (or by April 7, 2024).
13 On April 4, 2024, Sunthurst filed its first complaint, which was superseded by the Complaint on
14 April 17, 2024.

15 Although Sunthurst executed, and thereby agreed, to meet milestones under all of the active
16 interconnection agreements for the five projects, through its Complaint Sunthurst seeks to continue
17 to avoid its contractual obligations and, instead asks the Public Utility Commission of Oregon
18 (Commission) to order PacifiCorp to modify each of its interconnection agreements to:

- 19 (1) remove certain costs and interconnection requirements for direct transfer
20 trip (DTT) equipment, despite the fact DTT is necessary to ensure that
21 interconnection of Sunthurst’s projects does not adversely impact existing

² The original interconnection agreement for PRS1 was executed on March 14, 2016.

1 customers' quality of service, damage system equipment, or present a safety
2 concern for PacifiCorp personnel and the general public;

3 (2) accelerate the interconnection timelines while delaying Sunthurst's
4 obligation to pay the costs incurred to interconnect its projects;

5 (3) require PacifiCorp to redesign the interconnection facilities for PRS1 and
6 PRS2 to account for the possibility that new retail customers may at some
7 point in the future request electric service near the two projects, and

8 (4) amend both the interconnection agreement and power purchase agreement
9 (PPA) to allow installation of a battery energy storage system (BESS) at
10 Buckaroo 1, despite the fact PacifiCorp has never refused to do so.

11 Each of Sunthurst's requests are without merit and several are subject to a concurrently
12 filed Motion to Dismiss.

13 First, the need for DTT for each of Sunthurst's projects is well documented in the
14 interconnection studies for each project. Sunthurst does not engage with any of the actual facts
15 included in those studies. Instead, Sunthurst speculates that PacifiCorp may have erroneously
16 studied its projects based on the direct current (DC) nameplate rating of the project's solar panels,
17 rather than the project's alternating current (AC) output. Sunthurst's allegations ignore the plain
18 language in the interconnection studies and grossly misrepresents the Commission's recent
19 amendments to its net metering interconnection rules to suggest that all of PacifiCorp's prior
20 interconnection studies are unreliable. Contrary to Sunthurst's misrepresentations, the
21 Commission's recent interconnection rulemaking confirmed that PacifiCorp can require DTT if
22 necessary to prevent adverse system impacts, which is exactly what PacifiCorp's interconnection
23 studies for Sunthurst's projects say.

1 Moreover, for PRS1 and PRS2, Sunthurst is attempting to improperly relitigate the
2 interconnection requirements that were already litigated in its prior complaint, docket UM 2118.
3 In that case, Sunthurst challenged the interconnection requirements for PRS1 and PRS2, including
4 the DTT requirement. Sunthurst ultimately conceded DTT was justified for these projects and the
5 Commission denied the entirety of Sunthurst’s complaint *with prejudice*, which precludes
6 Sunthurst from once again litigating the same issue here.

7 Second, Sunthurst seeks to require PacifiCorp to accelerate design and construction work
8 to allow for an expedited interconnection, while seeking to delay payment of the costs PacifiCorp
9 will incur for the design and construction work. Given Sunthurst’s long history of failing to make
10 required contract payments, this request is entirely unreasonable.³ The progress payments ensure
11 there are sufficient payments from an interconnection customer to cover the costs as PacifiCorp
12 performs engineering design work, procures necessary equipment and materials, and ultimately
13 begins construction. If progress payments are delayed, then the corresponding interconnection
14 work will also be delayed, as explained in the Commission-approved interconnection agreements.⁴
15 PacifiCorp’s updated construction timeline for Sunthurst’s projects reflects the progress payment
16 timeline mutually agreed upon between PacifiCorp and Sunthurst in the most recently executed
17 versions of the interconnection agreements, and currently expected timelines for engineering
18 design, procurement, and construction. Sunthurst has requested that PacifiCorp accelerate its
19 interconnection work (thereby incurring higher costs sooner and overall), while also delaying

³ As of the date of this Answer, Sunthurst has only paid 13% of the payments they previously agreed to pay prior to requesting extensions on March 29, 2023—notwithstanding that interconnection agreements have been in place for these projects for several years.

⁴ Under “Payment Schedule” in the Sunthurst projects’ interconnection agreements, the following language is provided: “Failure to comply with the selected payment schedule will result in contractual breach, work stoppage, and slip of the milestone schedule above on a day-for-day basis.”

1 Sunthurst’s obligation to provide deposits to cover the costs incurred. Such a result is
2 unreasonable.

3 For several projects, Sunthurst requests the right to pay all or most of its interconnection
4 costs after the projects reach commercial operation, which is contrary to the Commission’s rules.⁵
5 OAR 860-082-0035(5), requires Sunthurst to either make progress payments or pay a deposit equal
6 to 100 percent of the estimated interconnection costs. The rules do not allow an interconnection
7 customer to force PacifiCorp—and by extension retail customers—to upfront fund Sunthurst’s
8 interconnections in the hopes of repayment after the work is complete.

9 Third, Sunthurst requests that PacifiCorp redesign the interconnection facilities associated
10 with PRS1 and PRS2 and to require retail customers to pay for the line extension necessary to
11 connect Sunthurst with PacifiCorp’s system. Sunthurst speculates that at some point in the future
12 other retail customers may locate their facilities near PRS1 and PRS2 and therefore current retail
13 customers should pay for the line extension. This was the same argument Sunthurst made in docket
14 UM 2118 and Sunthurst is therefore precluded from relitigating here. Moreover, at this time, no
15 customer has requested service or sought a line extension to anywhere that would alter the
16 interconnection facilities required for PRS1 and PRS2.

17 Fourth, Sunthurst demands that the Commission order PacifiCorp to amend the
18 interconnection agreement and PPA for Buckaroo 1 to allow it to install BESS, despite the fact
19 PacifiCorp has never refused to do so. Indeed, prior to filing its Complaint, Sunthurst had never
20 even asked to amend the PPA to include BESS. On the interconnection side, PacifiCorp provided

⁵ The Commission has granted PacifiCorp a waiver of certain interconnection rules in order to accommodate its transition to cluster studies and as a result PacifiCorp implemented its own small generator interconnection procedures, which were filed as a compliance filing in docket UM 2108. For purposes of this filing, however, the relevant rules in Division 82 and PacifiCorp’s small generator interconnection procedures are the same and therefore the references here will be to the rule.

1 Sunthurst with the necessary forms to determine if it was feasible to add BESS and Sunthurst never
2 returned the forms. Ultimately, while PacifiCorp is not unwilling to amend either agreement, it is
3 Sunthurst, not PacifiCorp, that is the barrier to obtaining the relief it seeks.

4 Finally, Sunthurst’s Complaint argues that PacifiCorp’s actions here have undermined
5 Oregon’s Community Solar Program (CSP). In fact, PacifiCorp has worked extensively with
6 Sunthurst to repeatedly accommodate its need for additional time to fund its interconnections.
7 PacifiCorp could have sought to terminate each of the five agreements on multiple occasions. The
8 fact PacifiCorp has not done so and has continued to offer Sunthurst additional time—even after
9 the February 2024 breach notices were provided⁶—undercuts any allegation of bad faith on the
10 part of PacifiCorp.

11 A viable and healthy CSP requires that certified projects move forward to serve customers
12 and meet the program’s goals. To that end, the Commission approved an interconnection process
13 for CSP projects that requires both the utility *and* the interconnection customer to follow the
14 process and comply with contractual obligations set forth in interconnection agreements.
15 PacifiCorp acted in good faith to meet its obligations and follow the interconnection process. In
16 contrast, Sunthurst has repeatedly flaunted the Commission’s process by failing to meet its
17 contractual obligations (or filing baseless complaints like the Complaint and in docket UM 2118).
18 Instead of meeting its obligations, Sunthurst blames PacifiCorp, while attempting to bootstrap its
19 arguments to the larger CSP to try to divert attention away from its failures to follow the
20 Commission’s interconnection process. Because there is no merit to Sunthurst’s Complaint, the

⁶ At 4:56 pm on March 25, 2024, Sunthurst notified PacifiCorp of its intent to file a complaint. Due to PacifiCorp personnel being out of the office, PacifiCorp was unable to substantively respond until April 1, 2024. On April 1, 2024, PacifiCorp advised Sunthurst that while it was not willing to rescind the notices of breach, it would be willing to negotiate new milestone dates (and thereby avoid terminating the interconnection agreements); however, Sunthurst never engaged in such discussions. Instead, it filed its initial complaint on April 4, 2024.

1 proceeding largely boils down to the following policy question: Should Sunthurst be required to
2 follow the Commission’s interconnection process and be held accountable if it fails to do so? If
3 the answer is “yes”, then Sunthurst’s complaint should be dismissed with prejudice because
4 nowhere in the Complaint does Sunthurst deny it has failed (and still fails today) to follow the
5 Commission’s interconnection process. If the answer is “no” then the interconnection process has
6 little meaning—as Sunthurst can repeatedly miss milestone obligations, avoid curing breaches, but
7 continue to have active interconnection agreements.

8 Unfortunately, Sunthurst’s long history of missing progress payments and delaying project
9 development suggests that its projects are simply not economically viable, or it does not have the
10 financial wherewithal to develop the projects in a timely manner. But instead of stepping aside,
11 Sunthurst has, once again, chosen litigation. Sunthurst is tying up over 10 megawatts (MW) of
12 limited CSP capacity and valuable interconnection capacity that could be provided to other
13 economically viable generators, including other CSP generators. The success of the CSP does not
14 depend on propping up flailing projects and getting them online at any cost. Sunthurst should be
15 required to follow the Commission’s interconnection process and be held accountable if it fails to
16 do so.

II. BACKGROUND

17 A. Sunthurst’s five solar projects.

18 This complaint involves five proposed photovoltaic generation resources: (1) 1.98 MW
19 PRS1; (2) 2.99 MW PRS2; (3) 1.56 MW Tutuilla; (4) 2.4 MW Buckaroo 1; and (5) 2.4 MW
20 Buckaroo 2. PRS1 has been designated interconnection queue number Q0666, PRS2 has been
21 designated interconnection queue number Q1045, Tutuilla has been designated interconnection
22 queue number OCS0245, Buckaroo 1 has been designated interconnection queue number OCS062,
23 and Buckaroo 2 has been designated interconnection queue number OCS063.

1 **1. PRS1**

2 PRS1 completed the interconnection study process and executed a small generator
3 interconnection agreement on March 14, 2016—*over eight years ago*. In that interconnection
4 agreement, Sunthurst agreed to interconnection requirements, an interconnection schedule, and
5 progress payments intended to allow interconnection of PRS1 to occur by May 15, 2017. To
6 accommodate Sunthurst’s request for additional time, PacifiCorp has agreed to extend the
7 milestones of the PRS1 interconnection agreement on seven separate occasions—executing
8 amendments on:

- 9 • June 20, 2016,
- 10 • October 11, 2016,
- 11 • November 27, 2017,
- 12 • November 6, 2018,
- 13 • March 17, 2022,
- 14 • August 15, 2022, and
- 15 • May 22, 2023.

16 The most recent May 2023 amendment resulted from Sunthurst’s failure to meet the project
17 development milestones and payment schedule included in the August 2022 amendment. Instead
18 of seeking to terminate the interconnection agreement for breach, PacifiCorp agreed to revise and
19 extend the milestones according to Sunthurst’s proposed timeline. Because Sunthurst sought to
20 extend the payment milestones included in the interconnection agreement, the commercial
21 operation date (COD) was also updated to September 30, 2025, to account for the delayed payment

1 dates requested by Sunthurst.⁷ Sunthurst executed the May 2023 amendment with a revised
2 payment schedule without objection.

3 In accordance with the May 2023 amended interconnection agreement, Sunthurst was
4 required to provide a progress payment of \$200,000 by January 2, 2024. When Sunthurst failed
5 to submit the required payment—which was primarily based on Sunthurst’s proposed payment
6 schedule—PacifiCorp provided notice of breach on February 7, 2024. Sunthurst had until April
7 7, 2024, to cure the breach.

8 **2. PRS2**

9 PRS2 was originally a 6 MW solar facility that was studied for interconnection before
10 being withdrawn and the project was resized to 2.99 MW. PRS1 and PRS2 propose to use the
11 same interconnection facilities and have the same point of interconnection. The interconnection
12 agreement for PRS2 was executed on March 17, 2022. To accommodate Sunthurst’s request for
13 additional time, PacifiCorp has agreed to extend the milestones in the interconnection agreement
14 on two separate occasions—executing amendments to the interconnection agreement on two
15 separate occasions:

- 16 • August 16, 2022, and
- 17 • May 5, 2023.

18 Like PRS1, the most recent May 2023 amendment for PRS2 also resulted from Sunthurst’s
19 failure to make payments required under the payment schedule included in the August 2022
20 amendments to the PRS2 interconnection agreement. Instead of seeking to terminate the
21 agreement, PacifiCorp agreed to extend the project development milestone and payment schedule
22 according to Sunthurst’s proposed timeline. The commercial operation date was updated to

⁷ First Am. Compl., Attachment B at 72.

1 September 30, 2025. Sunthurst executed the May 2023 amendment reflecting a revised payment
2 schedule without objection.

3 In accordance with the May 2023 amended interconnection agreement, Sunthurst was
4 required to provide a progress payment of \$138,500 by January 2, 2024.⁸ When Sunthurst failed
5 to submit the required payment—which was primarily based on Sunthurst’s proposed payment
6 schedule—PacifiCorp provided notice of breach on February 7, 2024. Sunthurst had until April
7 7, 2024, to cure the breach.

8 **3. Tutuilla**

9 Tutuilla is a 1.56 MW solar facility. The interconnection agreement for Tutuilla was
10 executed on December 28, 2021. To accommodate Sunthurst’s request for additional time,
11 PacifiCorp has agreed to extend the milestones of the interconnection agreement on two separate
12 occasions—executing amendments to the interconnection agreement on two separate occasions:

- 13 • August 15, 2022, and
- 14 • May 5, 2023.

15 Like PRS1 and PRS2, the most recent May 2023 amendment for Tutuilla also resulted from
16 Sunthurst’s failure to make payments required under the payment schedule included in the August
17 2022 amendments to the Tutuilla interconnection agreement. Instead of seeking to terminate the
18 agreement, PacifiCorp agreed to extend the project development milestones and payment schedule
19 according to Sunthurst’s proposed timeline. The commercial operation date was updated to
20 September 30, 2025.⁹ Sunthurst executed the May 2023 amendment reflecting a revised payment
21 schedule without objection.

⁸ First Am. Compl., Attachment B at 123.

⁹ First Am. Compl., Attachment B at 164.

1 In accordance with the May 2023 amended interconnection agreement, Sunthurst was
2 required to provide a progress payment of \$160,00 by January 2, 2024.¹⁰ When Sunthurst failed
3 to submit the required payment—which was primarily based on Sunthurst’s proposed payment
4 schedule—PacifiCorp provided notice of breach on February 7, 2024. Sunthurst had until April
5 7, 2024, to cure the breach.

6 **4. Buckaroo 1**

7 Buckaroo 1 is a 2.4 MW solar facility. The interconnection agreement for Buckaroo 1 was
8 executed by Sunthurst on August 25, 2022. To accommodate Sunthurst’s request for additional
9 time, PacifiCorp agreed to extend milestones for Buckaroo 1 and issued an amended
10 interconnection agreement, which was executed by Sunthurst on May 8, 2023.

11 Like PRS1, PRS2, and Tutuilla, the most recent May 2023 amendment for Buckaroo 1 also
12 resulted from Sunthurst’s failure to make payments required under the payment schedule included
13 in the August 2022 interconnection agreement. Instead of seeking to terminate the agreement,
14 PacifiCorp agreed to extend the project development milestones and payment schedule according
15 to Sunthurst’s proposed timeline. The commercial operation date was updated to September 30,
16 2025.¹¹ Sunthurst executed the May 2023 amendment reflecting a revised payment schedule
17 without objection.

18 In accordance with the May 2023 amended interconnection agreement, Sunthurst was
19 required to provide a progress payment of \$61,000 by January 2, 2024.¹² When Sunthurst failed
20 to submit the required payment—which was primarily based on Sunthurst’s proposed payment

¹⁰ First Am. Compl., Attachment B at 164.
¹¹ First Am. Compl., Attachment B at 199.
¹² First Am. Compl., Attachment B at 199–200.

1 schedule—PacifiCorp provided notice of breach on February 7, 2024. Sunthurst had until April
2 7, 2024, to cure the breach.

3 **5. Buckaroo 2**

4 Buckaroo 2 is a 2.99 MW solar facility. The interconnection agreement for Buckaroo 2
5 was executed by Sunthurst on August 25, 2022. To accommodate Sunthurst’s request for
6 additional time, PacifiCorp agreed to extend milestones for Buckaroo 2 and issued an amended
7 interconnection agreement, which was executed by Sunthurst on May 8, 2023.

8 Like PRS1, PRS2, Tutuilla, and Buckaroo 1, the most recent May 2023 amendment for
9 Buckaroo 2 also resulted from Sunthurst’s failure to make payments required under the payment
10 schedule included in the August 2022 interconnection agreement. Instead of seeking to terminate
11 the agreement, PacifiCorp agreed to extend the project development milestones and payment
12 schedule according to Sunthurst’s proposed timeline. The commercial operation date was updated
13 to September 30, 2025.¹³ Sunthurst executed the May 2023 amendment reflecting a revised
14 payment schedule without objection.

15 In accordance with the May 2023 amended interconnection agreement, Sunthurst was
16 required to provide a progress payment of \$47,200 by January 2, 2024.¹⁴ When Sunthurst failed
17 to submit the required payment—which was primarily based on Sunthurst’s proposed payment
18 schedule—PacifiCorp provided notice of breach on February 7, 2024. Sunthurst had until April
19 7, 2024, to cure the breach.

¹³ First Am. Compl., Attachment B at 234.

¹⁴*Id.*

1 **B. PacifiCorp has worked extensively to accommodate Sunthurst’s need for additional**
2 **time to meet its contractual obligations.**

3 Interconnection agreements contain “milestones”¹⁵ that describe specific actions that both
4 PacifiCorp and the interconnection customer must undertake in order to enable the interconnection
5 to occur on the timeline contemplated in the interconnection agreement. The milestones include
6 critical project development dates (e.g., requiring an interconnection customer to provide its
7 project design by a date certain) and a progress payment schedule. The progress payment schedule
8 ensures that PacifiCorp has sufficient funds from the interconnection customer to begin (and
9 continue) the design, procurement, and construction work necessary to achieve interconnection.

10 The progress payment requirements included in PacifiCorp’s interconnection agreements
11 implement OAR 860-082-0035(5),¹⁶ which provides two options for an interconnection customer
12 to pay for the costs of its interconnection. First, an interconnection customer can agree “to make
13 progress payments on a schedule established by the applicant and the interconnecting public
14 utility[.]”¹⁷ Second, if an interconnection customer does not agree on a progress payment
15 schedule, “then the public utility may require the applicant to pay a deposit of up to 100 percent
16 of the estimated costs.”¹⁸

¹⁵ For Community Solar Project Interconnection Agreements, the milestones are typically included in Attachment 3.

¹⁶ OAR 860-082-0035(5) (“A public utility may not begin work on interconnection facilities or system upgrades before an applicant receives the public utility’s good-faith, non-binding cost estimate and provides written notice to the public utility that the applicant accepts the estimate and agrees to pay the costs. A public utility may require an applicant to pay a deposit before beginning work on the interconnection facilities or system upgrades.”).

¹⁷ OAR 860-082-0035(5)(a) (If an applicant agrees to make progress payments on a schedule established by the applicant and the interconnecting public utility, then the public utility may require the applicant to pay a deposit of up to 25 percent of the estimated costs or \$10,000, whichever is less. The public utility and the applicant must agree on progress billing, final billing, and payment schedules before the public utility begins work.”).

¹⁸ OAR 860-082-0035(5)(b) (“If an applicant does not agree to make progress payments, then the public utility may require the applicant to pay a deposit of up to 100 percent of the estimated costs. If the actual costs are lower than the estimated costs, then the public utility must refund the unused portion of the deposit to the applicant within 20 business days after the actual costs are determined.”).

1 Completion of the interconnection and achieving commercial operation of a project is
 2 dependent on the interconnection customer fulfilling its milestone obligations by the dates in the
 3 agreement. If an interconnection customer fails to timely meet its milestone obligations, then often
 4 all the remaining milestone dates—including the commercial operation date—must be reassessed
 5 and modified. Typically, if earlier milestones are not met, later milestones must be re-scheduled
 6 to account for the delay.

7 Sunthurst has a long history of failing to meet its contractual obligations by failing to make
 8 required progress payments. While failure to meet a progress payment is a breach of the
 9 interconnection agreement that could justify termination, PacifiCorp has been extremely flexible
 10 with Sunthurst to accommodate Sunthurst’s repeated requests for additional time. Table 1 below
 11 shows the commercial operation date for each of Sunthurst’s projects as reflected in the original
 12 interconnection agreements. The subsequent commercial operations dates are those included in
 13 each of the amendments to the interconnection agreements and largely reflect delays resulting from
 14 Sunthurst’s repeated request for additional time.

15 **Table 1**

Project	Original COD	Subsequent CODs	Current COD¹⁹
PRS1	May 15, 2017	September 15, 2017; September 30, 2018; June 30, 2019; December 31, 2019; December 31, 2022; and May 5, 2023	September 30, 2025
PRS2	December 31, 2022	May 25, 2023	September 30, 2025
Tutuilla	December 30, 2022	May 25, 2023	September 30, 2025
Buckaroo 1	November 30, 2023	September 30, 2025	September 30, 2025
Buckaroo 2	November 30, 2023	September 30, 2025	September 30, 2025

¹⁹ The current COD presumed Sunthurst made its required progress payments in January 2024. Given that Sunthurst did not make those payments, the CODs in the currently effective interconnection agreements will necessarily be pushed back to account for Sunthurst’s delay.

1 In total, PacifiCorp has issued 12 amended interconnection agreements that primarily
2 extended milestone dates at Sunthurst's request.²⁰

3 **C. Sunthurst was in breach of all five interconnection agreements when it requested**
4 **extensions to progress payments in March of 2023.**

5 On March 29, 2023, Sunthurst submitted a letter requesting extensions to progress payment
6 dates for all five projects. At that time, Sunthurst was in breach of all five active interconnection
7 agreements by failing to provide the required progress payments (i.e., Sunthurst's required
8 payments were more than a year overdue for all five projects). PacifiCorp, however, had not issued
9 notices of breach.

10 Sunthurst's March 29, 2023, letter provided its preferred progress payment schedule for
11 each of the five projects. In response to the letter, PacifiCorp agreed to Sunthurst's proposed
12 extensions and issued amended interconnection agreements that included updated (and delayed)
13 progress payment dates. And because the progress payment dates were extended, PacifiCorp also
14 extended the commercial operation dates for all the projects. This result is logical and typically
15 unavoidable—delaying progress payments delays PacifiCorp's interconnection work, which
16 delays commercial operation.

17 Sunthurst never disputed the updated commercial operation dates and executed *without*
18 *objection* the amended interconnection agreements with a revised payment schedule and the
19 updated commercial operation dates. Notwithstanding that Sunthurst executed all the amended
20 interconnection agreements in May and August 2023 with no objection, on October 18, 2023,
21 Sunthurst submitted a written demand that PacifiCorp accelerate the commercial operation dates

²⁰ Two of the 12 amended interconnection agreements were issued following the dismissal of Sunthurst's complaint by the Commission, *see Sunthurst v. PacifiCorp*, Docket No. UM 2118, which involved PRS1 and PRS2.

1 for PRS1, PRS2, and Tutuilla and on November 29, 2023, Sunthurst submitted its Second
2 Amended Notice of Intent to File Complaint for PRS1, PRS2, and Tutuilla in docket UM 2177.²¹
3 Notwithstanding the threat of an additional baseless complaint, PacifiCorp continued to show
4 flexibility by offering, through an email dated January 12, 2024, accelerated commercial operation
5 dates for the PRS1 and PRS2. The accelerated commercial operation dates were April 18, 2025,
6 for PRS1 and July 25, 2025, for PRS2. In the email to Sunthurst, PacifiCorp noted that the
7 accelerated commercial operation dates were for PRS1 and PRS2 initially and that it would follow
8 up on Tutuilla, Buckaroo 1, and Buckaroo 1. PacifiCorp, in an email dated January 19, 2024,
9 proposed an accelerated date for Tutuilla of July 25, 2025. Sunthurst failed to respond to the offers
10 of accelerated commercial operation dates for PRS1, PRS2, or Tutuilla, so PacifiCorp ceased its
11 consideration of accelerated commercial operation dates.

12 **D. Process for executing PPAs for PRS1 and Tutuilla.**

13 PacifiCorp has executed Community Solar Program Power Purchase Agreements (“CSP
14 PPAs”) with each of Sunthurst’s projects. Sunthurst complains that PacifiCorp unreasonably
15 delayed executing the PPAs for PRS1 and Tutuilla.²²

16 **1. PRS1**

17 Sunthurst requested a draft PPA on May 5, 2022, but did not provide sufficient information
18 to prepare the draft PPA until June 10, 2022. At the time of Sunthurst’s request for a PPA, the
19 named entity seeking the PPA (Pilot Rock Solar 1, LLC) was not the same as the named entity
20 holding the executed interconnection agreement (Sunthurst Energy, LLC). It is critical that the
21 entity selling the output under the PPA also be the entity that has the interconnection service rights

²¹ Sunthurst never submitted a notice of intent to submit a complaint regarding Buckaroo 1 and Buckaroo 2.

²² First Am. Compl. at 9.

1 for the underlying generating facility. Moreover, the PPAs have specific obligations on the Seller
2 (i.e., the counterparty) to secure the interconnection rights and comply with the interconnection
3 agreement. Because the same entity must hold both the interconnection rights and PPA,
4 PacifiCorp asked Sunthurst to take steps necessary to resolve the discrepancy. While Sunthurst
5 worked to address the issue raised by PacifiCorp, PacifiCorp provided the draft PPA on June 15,
6 2022.

7 Sunthurst appears to have taken no steps to resolve the entity-name discrepancy until
8 July 8, 2022, when Sunthurst reached out to PacifiCorp's transmission function asking to amend
9 the PRS1 interconnection agreement to change the entity name from Sunthurst Energy, LLC to
10 Pilot Rock Solar 1, LLC. Sunthurst then provided the required assignment documentation to
11 PacifiCorp's transmission function on July 14, 2022. Thereafter, PacifiCorp sent an amended
12 interconnection agreement for PRS1 to Sunthurst on August 3, 2022, which reflected Pilot Rock
13 Solar 1, LLC as the interconnection customer. Sunthurst did not execute the amended
14 interconnection agreement until August 12, 2022. PacifiCorp countersigned the amended
15 interconnection agreement on August 15, 2022.

16 On the PPA side, PacifiCorp's merchant function continued to work with Sunthurst to
17 finalize the PPA pending Sunthurst's resolution of the interconnection issue. On July 28, 2022,
18 PacifiCorp's merchant function received confirmation from Sunthurst that PacifiCorp's
19 transmission function was in the process of amending the interconnection agreement. Therefore,
20 PacifiCorp's merchant function moved forward preparing the PPA. On August 27, 2022,
21 Sunthurst confirmed to PacifiCorp's merchant function that the interconnection agreement was
22 now held by the same party seeking the PPA. Sunthurst then provided a partially executed PPA
23 to PacifiCorp on September 16, 2022, and PacifiCorp countersigned the PPA on September 27,

1 2022. The PPA was executed roughly *one month* after Sunthurst provided documentation to
2 PacifiCorp’s merchant function that Sunthurst had amended its interconnection agreement to
3 conform the legal entities.

4 **2. Tutuilla**

5 Sunthurst requested a draft PPA on May 5, 2022, but did not provide sufficient information
6 to prepare the draft PPA until June 10, 2022. Like PRS1, at the time of Sunthurst’s request for a
7 PPA, the named entity seeking the PPA (Tutuilla Solar, LLC) was not the same as the named entity
8 holding the executed interconnection agreement (Sunthurst Energy, LLC). While Sunthurst
9 worked to address the issue raised by PacifiCorp, PacifiCorp provided the draft PPA on June 15,
10 2022.

11 Similar to PRS1, Sunthurst appears to have taken no steps to resolve the entity-name
12 discrepancy until July 8, 2022, when Sunthurst reached out to PacifiCorp’s transmission function
13 asking to amend the Tutuilla interconnection agreement to change the entity name from Sunthurst
14 Energy, LLC to Tutuilla, LLC. Sunthurst then provided the required assignment documentation
15 to PacifiCorp’s transmission function on July 14, 2022. Thereafter, PacifiCorp sent an amended
16 interconnection agreement for Tutuilla to Sunthurst on August 3, 2022, which reflected Tutuilla
17 Solar, LLC as the interconnection customer. Sunthurst did not execute until August 12, 2022.
18 PacifiCorp countersigned the amended interconnection agreement on August 15, 2022.

19 On the PPA side, PacifiCorp’s merchant function continued to work with Sunthurst to
20 finalize the PPA pending Sunthurst’s resolution of the interconnection issue. On July 28, 2022,
21 PacifiCorp’s merchant function received confirmation from Sunthurst that PacifiCorp’s
22 transmission function was in the process of amending the interconnection agreement. Therefore,
23 PacifiCorp’s merchant function moved forward preparing the PPA. Thereafter, Sunthurst
24 continued to provide the information necessary to complete preparation of a final PPA. Sunthurst

1 provided the final information required for the PPA on August 15, 2022. PacifiCorp provided an
2 executable PPA on August 31, 2022, which Sunthurst signed on September 1, 2022, and
3 PacifiCorp signed on September 2, 2022. PacifiCorp therefore provided an executable PPA 16
4 days after Sunthurst provided all the information required to prepare that executable PPA.

5 **E. Sunthurst’s incomplete request to install BESS at Buckaroo 1.**

6 Sunthurst requests that the Commission require PacifiCorp to amend the interconnection
7 agreement and PPA for Buckaroo 1 to enable the installation of BESS and to compensate Buckaroo
8 1 for the capacity benefits of adding BESS.²³

9 Turning first to the PPA, prior to filing the Complaint Sunthurst never asked PacifiCorp to
10 amend Buckaroo 1 PPA to include batteries. In addition, PacifiCorp has neither a Commission-
11 approved CSP PPA that includes storage facilities nor a Commission-approved avoided cost price
12 for CSP facilities with storage. Implementing Sunthurst’s request would require both.

13 Turning to the interconnection agreement, before filing its Complaint, Sunthurst did
14 request to amend its interconnection agreement to include BESS. However, in response to
15 Sunthurst’s request to amend the interconnection agreement, on January 12, 2024, Pacificorp sent
16 Sunthurst a material modification form to complete and return; the form would describe the BESS
17 that Sunthurst intended to install. PacifiCorp also asked Sunthurst to provide a one-line diagram
18 that showed how the BESS would be tied to the solar. PacifiCorp informed Sunthurst that it would
19 need to perform a brief restudy to include the BESS and that the interconnection agreement would
20 need to be amended. Sunthurst never responded to the January 12 email and never provided the
21 requested information. Indeed, even the Complaint itself fails to provide any details about the

²³ First Am. Compl. at 41.

1 BESS that would, for example, explain the capacity, how it will be installed, and how it will be
2 operated.

3 **F. The Notices of Breach issued on February 7, 2024, were the first issued for these five**
4 **projects.**

5 As Table 1 illustrates, PacifiCorp has repeatedly demonstrated flexibility with Sunthurst
6 with respect to the projects. In total, PacifiCorp has issued 12 amended interconnection
7 agreements at Sunthurst’s request. PacifiCorp could have repeatedly issued notices of breach
8 when Sunthurst did not meet its milestones, but instead PacifiCorp worked with Sunthurst to
9 amend the agreements and delay Sunthurst’s obligations. However, on February 7, 2024,
10 PacifiCorp did issue notices of breach, which is explicitly authorized under the terms of the
11 interconnection agreements that the Commission adopted and Sunthurst executed. Sunthurst could
12 have cured the breaches by making the progress payments that it had agreed to pay.

13 After issuing the notices of breach, on April 1, 2024, PacifiCorp offered Sunthurst yet
14 another extension of the progress payments to accommodate Sunthurst’s request for additional
15 time. PacifiCorp made clear, however, that extending the progress payments would also result in
16 extending the commercial operation dates. Sunthurst never engaged in those discussions and
17 instead filed its first complaint on April 4, 2024, which was subsequently superseded by the First
18 Amended Complaint filed on April 17, 2024.

19 **G. Sunthurst already litigated the interconnection requirements for PRS1 and PRS2.**

20 On September 29, 2020, Sunthurst filed a complaint against PacifiCorp related to the
21 interconnection of PRS1 and PRS2. The complaint was docketed as UM 2118. In its complaint,
22 Sunthurst challenged the estimated interconnection costs and requirements for PRS1 and PRS2
23 and alleged, inter alia, that “PacifiCorp’s interconnection costs for Oregon small generating

1 facilities [were] unreasonably high.”²⁴ In testimony, Sunthurst specifically challenged
2 PacifiCorp’s requirement that PRS1 and PRS2 install DTT as a part of the project’s
3 interconnection and disputed cost responsibility for the line extension required to connect PRS1
4 and PRS2 to PacifiCorp’s system.²⁵ During the course of the case, Sunthurst conceded that the
5 DTT requirement was reasonable and dropped its request to have retail customers pay for the line
6 extension.

7 The Commission ultimately found that the costs for interconnection with respect to PRS1
8 and PRS2 were reasonable, and the Commission dismissed Sunthurst’s complaint with prejudice.²⁶

III. EXECUTIVE SUMMARY

9 A. Sunthurst’s interconnection costs and DTT requirement are reasonable.

10 Sunthurst asks that the Commission direct PacifiCorp to restudy each of its projects to
11 determine if DTT remains necessary to provide a safe and reliable interconnection. In support of
12 this request, Sunthurst claims that the “world has changed since PacifiCorp concluded DTT is
13 necessary in at least three material respects.”²⁷ None of the alleged changes identified by
14 Sunthurst, however, provide a basis for relief because Sunthurst is either factually incorrect or the
15 alleged change was in fact known when Sunthurst’s projects were studied and when Sunthurst
16 signed its interconnection agreements. Moreover, Sunthurst’s claims sidestep that the reason the
17 “world has changed” in relation to its projects is solely due to the developmental delays that

²⁴ *Sunthurst v. PacifiCorp*, Docket No. UM 2118, Compl. at 11–12 (Sept. 29, 2020).

²⁵ See e.g., *Sunthurst v. PacifiCorp*, Docket No. UM 2118, Sunthurst/100, Hale/5–6 and Sunthurst/200, Beanland/5, 7, 9–11, 29.

²⁶ *Sunthurst v. PacifiCorp*, Docket No. UM 2118, Order No. 21-296 (Sept. 15, 2021).

²⁷ First Am. Compl. at 3.

1 Sunthurst created—all five projects would have already been in service if Sunthurst had complied
2 with its contractual obligations.²⁸

3 **1. PacifiCorp did not inaccurately study Sunthurst based on its projects’ DC**
4 **capacity.**

5 Sunthurst points to the Commission’s recently adopted revisions to its interconnection
6 rules and claims that PacifiCorp’s “historic practice of using DC nameplate capacity” to study
7 interconnections is inaccurate and therefore PacifiCorp’s “past studies using DC nameplate
8 capacity data cannot be relied on.”²⁹ This claim, however, has no factual basis.

9 First, Sunthurst’s interconnection studies clearly state that the projects were studied based
10 on their AC output, not “DC nameplate capacity.” Therefore, Sunthurst’s speculation that
11 PacifiCorp historically used “DC capacity ratings to model DER Solar such as Complainants’
12 projects” is contradicted by the studies and provides no basis for relief.³⁰

13 Second, Sunthurst grossly misrepresents what happened in the Commission’s recent
14 rulemaking, docket AR 659. In that case, the Commission revised both the small generator
15 interconnection rules (Division 82) and the net metering interconnection rules (Division 39). The
16 prior net metering rules defined a net metering facility’s “generation capacity” based on the DC
17 nameplate rating of the facility.³¹ The Commission’s new rules for net metering facilities,
18 however, “reflect export capacity value, which is typically measured at the inverter as an

²⁸ Had Sunthurst complied with the original interconnection agreement for PRS1, it would have been in service in 2017.

²⁹ First Am. Compl. at 4.

³⁰ First Am. Compl. at 23.

³¹ See prior OAR 860-039-0005(3)(i) (defines “generation capacity” as the “nameplate capacity of the power generating device(s). Generation capacity does not include the effects caused by inefficiencies of power conversion or plant parasitic loads.”).

1 alternating current (AC) nameplate rating.”³² The record in docket AR 659 clearly explains that
2 this transition from DC to AC ratings applied to *only net metering facilities*, not small generators
3 like Sunthurst because PacifiCorp has always used small generator’s AC output when studying the
4 generator’s interconnection (i.e., PacifiCorp studies interconnections based on the customer’s
5 requested capacity that will be injected onto the grid).³³ Contrary to Sunthurst’s misrepresentation
6 of the record in docket AR 659, PacifiCorp did not have a “historical practice” of studying small
7 generators based on their DC capacity.

8 Third, even accounting for historical use of DC ratings for net metering projects, there
9 would be no change to the interconnection study results for Sunthurst’s projects. When studying
10 an interconnection to a circuit that has supervisory control and data acquisition equipment
11 (SCADA), the Company uses the data from the SCADA to determine the minimum and maximum
12 loads on the circuit. That SCADA data accounts for the actual load and net metering generation
13 on the circuit. This contrasts with circuits that do not have SCADA, in which case the Company
14 uses manual readings and then manually adjusts the results to account for net metering generation
15 on the circuit (which is where the DC to AC issue can arise). All Sunthurst’s projects seek to
16 interconnect to a circuit with SCADA, so there were no manual adjustments for net metering

³² *In the Matter of Rulemaking to Update Division 82 Small Generator Interconnection Rules, and Division 39 Net Metering Rules*, Docket No. AR 659, Order No. 24-068, App. A at 14 (Mar. 8, 2024) (“[c]urrent interconnection rule requirements reference direct current (DC) nameplate capacity. As a part of modernizing the rule requirements, these items will be changed to also reflect export capacity value, which is typically measured at the inverter as an alternating current (AC) nameplate rating. Utilities will need to update their records, or historic legacy data, for existing net metering and small generator projects and update their data collection approach to reflect this change.”).

³³ *See In the Matter of Rulemaking to Update Division 82 Small Generator Interconnection Rules and Division 39 Net Metering Rules*, Docket No. AR 659, Joint Utilities’ Opening Comments at 5 (Oct. 13, 2023) (“As background, the Joint Utilities already have documented the AC capacity of most—if not all—small generator facilities, and the AC capacity should reflect the export capacity in most cases. However, the Joint Utilities did not historically document net metering customers’ export capacity (in AC); rather, the utilities tracked the nameplate capacity of net metering facilities in DC. The Joint Utilities’ historical approach is consistent with and required by the existing Division 39 rules.”).

1 generation. This means that the legacy conversion of net metering generation from DC to AC will
2 have no impact on the DTT requirement for Sunthurst’s projects.

3 Fourth, even assuming, arguendo, that the new rules modify how PacifiCorp will
4 prospectively study new small generator interconnection requests, the rules are not retroactive, do
5 not reflect a finding by the Commission that prior interconnection studies are no longer reliable,
6 and do not provide a path for projects with executed interconnection agreements to demand
7 restudies under the new rules. Such a result would paralyze the interconnection study process
8 because every single generator could now demand a restudy. If Sunthurst believes that the new
9 rules will provide materially different study results, Sunthurst can submit a new interconnection
10 request seeking study under the new rules.

11 **2. DTT is necessary to prevent adverse system impacts from Sunthurst.**

12 “OAR 860-082-0035 requires utilities to work through interconnection studies to identify
13 adverse system impacts associated with [distributed energy resource] interconnection.”³⁴ The
14 Commission “interpret[s] OAR 860-082-0035 in part to require mitigation of those impacts to a
15 degree that leaves customers and the system in an equivalent position relative to safety and
16 reliability as it was prior to the introduction of the [distributed energy resource] in question.”³⁵ In
17 its Complaint, Sunthurst demands that PacifiCorp restudy each of its projects to determine if DTT
18 is necessary because, according to Sunthurst, “there is growing industry recognition that inverter-
19 based generation does not cause harmful effects on feeders where there are no rotating generators
20 on the same feeder.”³⁶

³⁴ *In the Matter of Zena Solar, LLC v. Portland General Electric Company, Pursuant to ORS 756.500 and OAR 860-082-0085*, Docket No. UM 2164, Order No. 22-134 at 19 (Apr. 29, 2022).

³⁵ *Id.*

³⁶ First Am. Compl. at 4.

1 In docket AR 659 the Commission rejected a substantively identical argument presented
2 by the Interstate Renewable Energy Council (IREC)³⁷ and specifically allowed utilities “to
3 exercise discretion to require specific inverter settings, configurations, or additional equipment on
4 circuits,” thereby giving utilities flexibility to include DTT when necessary.³⁸ The Commission’s
5 conclusion in docket AR 659 was informed by the comments submitted by the Joint Utilities
6 explaining:

7 . . .PGE and PacifiCorp employ a standard of less than 2.0 second
8 reclosing in some circumstances to help maintain system reliability
9 and safety and quality of service to customers. Based upon careful
10 evaluation and assessment of a wide range of factors, as well as
11 operating experience, these utilities employ high-speed reclosing on
12 certain circuits to improve reliability and enhance customer
13 experience by utilizing a faster reclosing interval that may be less
14 likely to negatively impact customers.

15 In those instances where high-speed reclosing systems have been, or
16 will be, implemented, [allowing DTT] enables the utility to
17 coordinate reclosing timing with the tripping speed of affected
18 distributed energy resources (DERs) in an effort to avoid equipment
19 damage and prevent unacceptable stresses or disturbances on the
20 system. Specifically, the [proposed rule] language gives the utility
21 discretion to ensure the DER system is appropriately coordinated in
22 responding to abnormal operating conditions or in preventing
23 unintentional islanding when operating in an area with a high-speed
24 reclosing scheme. If a circuit recloses, or reconnects to the system,
25 while a DER on the circuit is still generating, then the reclosing
26 occurs out of synchronism. This is the hazardous scenario that will
27 potentially exist if PGE and PacifiCorp are not allowed to continue
28 their existing practices. As the National Renewable Energy
29 Laboratory (NREL) has explained:

30 Out-of-synchronism reclosing might cause severe damage to the
31 local network, equipment, and personnel. IEEE Std 1547-2018
32 requires DERs to detect islanding conditions within 2 seconds of the

³⁷ *In the Matter of Rulemaking to Update Division 82 Small Generator Interconnection Rules, and Division 39 Net Metering Rules*, Docket No. AR 659, Comments of the Interstate Renewable Energy Council on Proposed Revisions to the Small Generator Interconnection and Net Metering Rules at 10-13 (Nov. 7, 2023).

³⁸ Order No. 24-068 at 2.

1 event; however, a faster reclosing attempt (faster than 2 seconds)
2 might reclose a still-online DER that is out of synchronism[.]

3 The IEEE standard provides only the minimum functional technical
4 requirements and recognizes that DERs need to be locally
5 integrated, which may necessitate supplementing the standard to
6 address specific situations.³⁹

7 Moreover, Sunthurst’s interconnection studies identifies the need for DTT and explain in
8 detail why it is necessary. Sunthurst has not directly disputed any of those study results.

9 Additionally, in the prior litigation related to PRS1 and PRS2, Sunthurst’s testimony
10 specifically challenged the DTT requirement.⁴⁰ In response, PacifiCorp’s testimony and briefing
11 explained at length why DTT was necessary, making largely the same points that the Joint Utilities
12 raised in the docket AR 659 comments excerpted above.⁴¹ Notably, in that prior case, Sunthurst
13 explained in its brief that it “dropped its objections to costly Direct Transfer Trip relay protection
14 after PacifiCorp provided a reasoned justification.”⁴² And in another fully litigated case, the
15 Commission specifically approved Portland General Electric Company’s requirement that a 2.5
16 MW CSP generator install DTT as part of a protection package necessary to mitigate adverse
17 system impacts resulting from the interconnection.⁴³

³⁹ *In the Matter of Rulemaking to Update Division 82 Small Generator Interconnection Rules and Division 39 Net Metering Rules*, Docket No. AR 659, Joint Utilities’ Response Comments at 5-6 (Nov. 7, 2023).

⁴⁰ *Sunthurst v. PacifiCorp*, Docket No. UM 2118, Sunthurst/100, Hale/5-6 (“When I received the System Impact Study (SIS) for [PRS1], I saw that the costs were dominated by the direct transfer trip scheme (DTT). I hired a cost consultant to determine why costs were so high. He was a long time PacifiCorp systems engineer, now consulting to project developers. He reviewed IEEE1547 requirements as they apply to smart inverters and determined that most utilities do not require DTT for projects under 2 MW if the inverters comply with IEEE 1547. A 2016 NREL Report he provided me said only Hawaiian utilities were requiring transfer trip (a large cost) on under 5 [MW] projects. PacifiCorp would not remove the [DTT] requirement. Nor would they allow me to install the DTT at my cost.”).

⁴¹ *Sunthurst v. PacifiCorp*, Docket No. UM 2118, PAC/200, Patzkowski, Taylor, Vaz/39; *see also Sunthurst v. PacifiCorp*, Docket No. UM 2118, PAC/100, Bremer/28 (“ . . . PacifiCorp is required to install DTT equipment to safely and reliably interconnect Sunthurst’s projects. But for their interconnections, PacifiCorp would not install DTT and therefore retail customers should not be required to pay for equipment that is caused by Sunthurst’s projects and not necessary to provide retail service.”).

⁴² *Sunthurst v. PacifiCorp*, Docket No. 2118, Sunthurst Reply Brief at 3 (Apr. 13, 2021).

⁴³ *In the Matter of Zena Solar, LLC v. Portland General Electric Company, Pursuant to ORS 756.500 and OAR 860-082-0085*, Docket No. UM 2164, Order No. 22-134 at 7-12 (Apr. 29, 2022).

1 **3. IEEE 1547-2018 was known when studies were performed.**

2 Finally, Sunthurst argues that restudies are warranted because IEEE 1547-2018 allows
3 installation of DTT on the low side of the transformer in some cases, as opposed to the high side
4 of the transformer.⁴⁴ However, PacifiCorp requires installation on the high side of the transformer
5 to ensure proper grounding and the implementation of IEEE 1547-2018 has no impact on the
6 placement of the DTT equipment on the high side of the transformer. Moreover, IEEE 1547-2018
7 adopted in 2018—years before: (1) the interconnection studies were undertaken for PRS2,
8 Tutuilla, Buckaroo 1, and Buckaroo 2; and (2) Sunthurst filed its prior complaint in UM 2118
9 regarding PRS1 and PRS2. Thus, the standard was considered in the interconnection studies for
10 PRS2, Tutuilla, Buckaroo 1, and Buckaroo 2 and was in existence when the Commission dismissed
11 Sunthurst’s UM 2118 complaint with prejudice for PRS1 and PRS2.

12 **4. If Sunthurst wants restudies, it can submit new interconnection requests.**

13 Ultimately, Sunthurst asks the Commission to direct PacifiCorp to restudy each of its
14 projects potentially using different assumptions, different rules, and different standards. If
15 Sunthurst wants to take advantage of potential technological changes occurring in the future, then
16 Sunthurst is free to terminate the existing agreements and re-submit interconnection requests if
17 and when the technology exists to allow its projects to avoid the need for DTT. But the
18 Commission’s interconnection rules do not allow customers with executed interconnection
19 agreements to continually breach their milestone obligations and insist on restudies in the hopes
20 that the restudy will reduce the cost or requirements of their interconnection.

⁴⁴ First Am. Compl. at 4.

1 **B. Sunthurst’s commercial operation dates are reasonable and reflect Sunthurst’s**
2 **failure to adhere to milestones.**

3 Sunthurst complains that when it sought to extend the progress payments in March 2023
4 “PacifiCorp made unrequested and unreasonable changes to all the milestones and construction
5 schedules.”⁴⁵ Sunthurst concedes that it did not dispute the updated milestone dates, including the
6 updated commercial operation dates, and that it signed the interconnection agreements without
7 objection. However, the time to dispute the updated milestones was *before* signing the legally
8 binding agreement, not after.

9 Moreover, the extended commercial operation dates result directly from Sunthurst’s failure
10 to adhere to prior milestone dates and continued and persistent request to delay the interconnection
11 of its projects. Interconnection agreement milestones are chronological tasks that must be timely
12 completed to allow for interconnection. In general, PacifiCorp does not have interconnection and
13 construction personnel exclusively working on one interconnection request. Instead, the personnel
14 are working on multiple interconnection requests. Within the CSP, PacifiCorp currently has 31
15 interconnection requests in some stage of processing. Beyond the CSP, PacifiCorp has hundreds
16 of pending interconnection requests as well as dozens of other active projects related to system
17 maintenance, enhancing reliability, new load requests, and wildfire mitigation. When a customer
18 misses a milestone, PacifiCorp cannot freeze personnel in place until the interconnection customer
19 (Sunthurst in this case) either complies with its milestone or withdraws its request. Instead, those
20 personnel are reassigned to other projects, including activities for other interconnection customer
21 projects that are willing and able to move forward.

⁴⁵ First Am. Compl. at 7.

1 When Sunthurst most recently sought to delay its payment milestones (in March 2023), it
2 had been more than a year delinquent in making its progress payments. This means that PacifiCorp
3 had effectively stopped all work on the Sunthurst projects. When Sunthurst sought to amend its
4 interconnection agreements and extend its project milestones, PacifiCorp reasonably reevaluated
5 its engineering and construction timeline to account for Sunthurst’s delays and the then-current
6 conditions. This wholistic assessment accounted for then-current work on other projects,
7 anticipated supply chain constraints, expected engineering and construction timelines based on
8 conditions as of March 2023, which were not the same as when Sunthurst’s prior agreements were
9 executed or amended. Taking all of the existing conditions into account, PacifiCorp reasonably
10 estimated that if Sunthurst met all of the progress payments it had proposed in March 2023,
11 Sunthurst’s projects could reach commercial operation in September 2025.

12 Sunthurst readily accepted the 2025 commercial operation dates that were a part of the May
13 2023 amended interconnection agreements. It was not until October 19, 2023, that Sunthurst
14 abruptly demanded entirely unrealistic 2024 commercial operation dates. Coupled with
15 Sunthurst’s demand to postpone its progress payments, Sunthurst now wants to delay
16 commencement of its interconnection work, while expediting the actual interconnection.

17 In response to Sunthurst’s October 19, 2023, letter, PacifiCorp reexamined the commercial
18 operation dates included in the executed interconnection agreements, focusing initially on PRS1
19 and PRS2. On January 12 and 19, 2024, PacifiCorp emailed Sunthurst and indicated that it could
20 accelerate the commercial operation dates for PRS1, PRS2, and Tutuilla by several months.
21 Sunthurst never responded to the offers.

22 Sunthurst’s complaints about needing accelerated interconnection must also be viewed in
23 the overall context of its project development. Had Sunthurst complied with the milestones

1 *Sunthurst agreed to* in the original interconnection agreements for its projects, *every one of its*
2 *projects would be interconnected today.* Sunthurst’s projects remain undeveloped because
3 Sunthurst has repeatedly breached its contractual obligations and has requested—and received—
4 repeated extensions of its contractual obligations. Indeed, PRS1 has been in PacifiCorp’s
5 interconnection queue for *10 years*, taking up valuable interconnection capacity that could
6 potentially be allocated to another project. Ultimately, successful interconnection requires that the
7 interconnection customer follow the Commission’s interconnection process and fulfill its
8 contractual obligations under interconnection agreements. Sunthurst has repeatedly failed to do
9 so, to the detriment of its own projects and Oregon’s CSP. Sunthurst should be held accountable
10 for its own actions.

11 **C. The progress payments dates are reasonable.**

12 Sunthurst also complains that the progress payment dates are too accelerated,⁴⁶ but that
13 complaint rings hollow considering that Sunthurst itself proposed revised dates and then signed an
14 interconnection agreement legally binding Sunthurst to make payments according to the new
15 schedule based primarily on dates it proposed.

16 In its Complaint, Sunthurst demands that PacifiCorp do away with all progress payment
17 dates for Buckaroo 1, Tutuilla, and PRS2 and instead allow Sunthurst to make “all or most
18 payment” for its interconnection after these projects reach commercial operation.⁴⁷ This request,
19 however, is contrary to the Commission’s rules. Sunthurst is either required to make progress
20 payments or pay a deposit equal to 100 percent of its estimated interconnection costs.⁴⁸ The rules
21 do not allow an interconnection customer to demand that retail customers finance its

⁴⁶ First Am. Compl. at 6-7.

⁴⁷ First Am. Compl. at 8.

⁴⁸ OAR 860-082-0035(5).

1 interconnection. Such a request is particularly troubling here given Sunthurst’s consistent inability
2 to make its contractually obligated payments. Even assuming Sunthurst was entitled to force
3 PacifiCorp’s customers to finance its interconnection, PacifiCorp would require development
4 security among other contractual protections against Sunthurst’s potential non-payment, which
5 would require negotiation of a very different interconnection agreement for each of Sunthurst’s
6 projects. Granting such relief would therefore also run counter to OAR 860-082-0025(7)(f)(A),
7 which entitles PacifiCorp to use the Commission-approved interconnection agreement.

8 **D. PacifiCorp has worked in good faith with Sunthurst.**

9 Sunthurst complains that PacifiCorp has been unwilling to renegotiate its interconnection
10 agreements and PPAs to accommodate later payment milestones, earlier commercial operation
11 dates, and to allow installation of batteries at Buckaroo 1.⁴⁹ In fact, at Sunthurst’s request,
12 PacifiCorp has extended the progress payment deadlines repeatedly, often at a point when
13 Sunthurst was breaching the interconnection agreement. PacifiCorp’s willingness to work with
14 Sunthurst rather than seeking termination undercuts any claim that PacifiCorp has acted in bad
15 faith for refusing to renegotiate the agreements. PacifiCorp sent the February 2024 breach notices
16 after concluding that renegotiation was no longer possible because Sunthurst was demanding the
17 impossible—to delay its progress payments while accelerating interconnection work and
18 commercial operation dates.

19 Sunthurst claims that after it filed a notice of complaint in November 2023, PacifiCorp
20 became “less flexible, not more.”⁵⁰ In fact, in January 2024, PacifiCorp offered to accelerate the
21 commercial operation dates for PRS1, PRS2, and Tutuilla—Sunthurst never responded.

⁴⁹ First Am. Compl. at 12.

⁵⁰ First Am. Compl. at 12.

1 PacifiCorp then offered to extend the progress payment dates for all five projects in February
2 2024—Sunthurst refused because PacifiCorp would not accelerate all the commercial operation
3 dates. Finally, PacifiCorp again offered to revise the progress payment dates in April of 2024 (i.e.,
4 in response to Sunthurst counsel’s notice of filing a complaint), but Sunthurst did not engage in
5 those discussions.

6 Turning to the batteries at Buckaroo 1, Sunthurst failed to respond to PacifiCorp’s January
7 2024 email seeking additional information to determine if installation of batteries constituted a
8 material modification requiring a new interconnection request. And Sunthurst has never reached
9 out to PacifiCorp to amend its PPA to include batteries, undermining any claim that PacifiCorp
10 has refused to work with them.

11 At every turn PacifiCorp has accommodated Sunthurst’s repeated and persistent failures to
12 honor its contractual commitments and worked diligently and in good faith to help Sunthurst move
13 forward with its projects.

14 **E. PacifiCorp did not unreasonably delay providing executable PPAs for PRS1 and**
15 **Tutuilla.**

16 Sunthurst alleges that PacifiCorp wrongly refused to process its PPAs due to an alleged
17 unlawful demand to first see executed interconnection agreements.⁵¹ This is false. PacifiCorp did
18 not execute the PPAs until the legal entity on the PPA was the same legal entity on the
19 interconnection agreement—which is a requirement of the seller in the PPA. Confirming that the
20 PPA counterparty actually has interconnection rights is basic due diligence, no different than
21 confirming that the PPA counterparty has site control. In this case, when Sunthurst requested
22 PPAs for PRS1 and Tutuilla, the interconnection agreements were held by a different legal entity

⁵¹ First Am. Compl. at 9.

1 than PRS1 and Tutuilla and therefore PacifiCorp reasonably required Sunthurst to fix the
2 discrepancy.

3 The time required to execute the PPA was therefore driven by Sunthurst’s failure to initially
4 ensure that the same legal entity would hold both the interconnection rights and sign the PPA
5 compounded by Sunthurst’s delays remedying this deficiency. Indeed, PacifiCorp notified
6 Sunthurst on June 10, 2022, of the need to amend the interconnection agreements and Sunthurst
7 did nothing to resolve it until over a month later, on July 14, 2022, when Sunthurst finally provided
8 to PacifiCorp’s transmission function the documentation required to transfer the interconnection
9 agreements to PRS1 and Tutuilla. PacifiCorp’s transmission function sent amended
10 interconnection agreements within three weeks and executed the amended agreements within three
11 days of Sunthurst’s signing.

12 While Sunthurst was working to amend its interconnection agreements, PacifiCorp’s
13 merchant function continued to work with Sunthurst to finalize executable PPAs for both projects
14 and execution timely occurred once Sunthurst amended its interconnection agreements so that the
15 same legal entity was on both the interconnection and power purchase agreements.

16 **F. Sunthurst’s request to install BESS at Buckaroo 1 is beyond the scope of a complaint.**

17 Sunthurst concedes that PacifiCorp has not refused to work with Sunthurst to modify its
18 PPA and interconnection agreement to allow for BESS at Buckaroo 1—meaning there is no dispute
19 for the Commission to resolve in this complaint proceeding.

20 PacifiCorp is willing to explore the possibility of amending Buckaroo 1’s PPA to allow for
21 the installation of BESS at the project. Doing so, however, will likely require Sunthurst to
22 terminate its existing standard form CSP PPA and either execute a standard solar-plus-storage
23 qualifying facility (QF) PPA or negotiate a non-standard QF PPA.

1 In addition, PacifiCorp is willing to amend the interconnection agreement to allow
2 installation of BESS at Buckaroo 1, if the interconnection agreement is not terminated in
3 accordance with PacifiCorp’s counterclaims. But before doing so, Sunthurst must first cure its
4 existing breach. PacifiCorp also requires sufficient details from Sunthurst regarding its proposed
5 design to determine whether the installation of BESS would constitute a material modification, in
6 which case Sunthurst would be required to submit a new interconnection request for Buckaroo 1.
7 To date, and consistent with its history, Sunthurst has failed to follow through and provide
8 PacifiCorp with the information necessary to address Sunthurst’s request.

9 While the Company is willing to work with Sunthurst, this complaint process is the wrong
10 forum to resolve the issues presented by Sunthurst’s request, not least of all because Sunthurst has
11 failed to provide sufficient information regarding its proposed facility to even begin consideration
12 of its request. Moreover, because Sunthurst has failed to cure the breach for Buckaroo 1, if this
13 Complaint is dismissed, the underlying interconnection agreement will be terminated.

14 **G. Sunthurst must pay for the costs of line extensions at PRS1 and PRS2.**

15 Sunthurst asks the Commission to order PacifiCorp to redesign the generator tie-in line for
16 PRS1 and PRS2 and require retail customers to pay for the lines. Sunthurst claims that the existing
17 design is “obsolete” because PacifiCorp should be required to extend service to a new industrial
18 park in Pilot Rock to “accelerate development.”⁵² Sunthurst made this same argument in docket
19 UM 2118 and just like here, there are no actual customers requesting service in the industrial park
20 and, even if a customer did locate there and seek service, the provision of that service would occur
21 through PacifiCorp’s existing tariff rules, including its rule governing line extensions. PacifiCorp
22 cannot redesign the interconnection and force retail customers to pay for a new extension of service

⁵² First Am. Compl. at 9-10.

1 to a currently vacant industrial park in the hopes that at some point in the future an actual customer
2 will materialize.

3 **H. Sunthurst’s failure to move forward with its projects is undermining the CSP.**

4 Sunthurst argues that PacifiCorp has undermined the CSP by making it difficult for
5 Sunthurst to develop its projects.⁵³ PacifiCorp, however, has worked tirelessly to accommodate
6 Sunthurst’s repeated failures to honor its contractual obligations. Sunthurst’s inability to develop
7 its projects is not the result of anything PacifiCorp has done. It is the result of Sunthurst’s own
8 repeated failures and breaches of its agreements. All PacifiCorp has done is require Sunthurst to
9 honor its contractual commitments, follow the Commission’s interconnection rules, timely provide
10 necessary information and payments to allow interconnection work to commence, and move
11 forward with its projects. It is not PacifiCorp that has undermined the CSP, it is Sunthurst.
12 Sunthurst has tied up over 10 MW of interconnection capacity for years with projects that appear
13 economically non-viable. To advance the CSP, Sunthurst is required to either move forward or
14 have its requests be deemed withdrawn (for failure to cure its breaches) to provide the coveted and
15 increasing sparse interconnection capacity to other CSP, or non-CSP, developers capable of
16 bringing projects into commercial operation. Sunthurst should be held accountable for its own
17 actions and unwillingness to follow the Commission’s interconnection process.

IV. ANSWER

18 PacifiCorp hereby answers Sunthurst’s Complaint. PacifiCorp denies any allegations not
19 specifically admitted herein and reserves the right to supplement this Answer if Sunthurst amends
20 its Complaint a second time. As for the Introduction and Executive Summary portion of
21 Sunthurst’s Complaint, the section restates facts and arguments alleged later in the enumerated

⁵³ See First Am. Compl. at 15.

1 paragraphs of the Complaint. To the extent a response is necessary, PacifiCorp denies the
2 allegations in the Introduction and Executive Summary. Similarly, the Prayer for Relief restates
3 arguments alleged previously in enumerated paragraphs of the Complaint. To the extent a response
4 is necessary PacifiCorp denies the allegations in the Prayer for Relief.

5 The headings listed below between the numbered answers reprint the headings used in
6 Sunthurst’s Complaint. With respect to the particular numbered paragraphs of the Complaint,
7 PacifiCorp answers as follows:

8 **A. Basis for Commission Jurisdiction and Identity of Parties**

9 1. To the extent that the allegations in paragraph 1 of the Complaint are legal
10 conclusions, no response is required. To the extent a response is required, ORS 756.500 speaks
11 for itself.

12 2. PacifiCorp admits paragraph 2.

13 3. PacifiCorp admits that Sunthurst’s projects have executed CSP PPAs with
14 PacifiCorp, the remaining allegations in paragraph 3 describe Sunthurst and require no response.

15 4. PacifiCorp admits in part the allegations in paragraph 4. PacifiCorp admits that it
16 has interconnection agreements with all five projects and that the agreements were last amended
17 in May of 2023.

18 5. PacifiCorp admits the allegations in paragraph 5.

19 **B. Material Facts**

20 6. PacifiCorp denies the allegations in paragraph 6.

21 7. PacifiCorp has insufficient information or knowledge to admit or deny the
22 allegations in paragraph 7.

23 8. PacifiCorp has insufficient information or knowledge to admit or deny the
24 allegations in paragraph 8.

1 9. PacifiCorp has insufficient information or knowledge to admit or deny the
2 allegations in paragraph 9.

3 10. PacifiCorp neither admits nor denies the allegations in paragraph 10, which
4 describes the CSP. The requirements of the CSP speak for themselves.

5 11. PacifiCorp has insufficient information or knowledge to admit or deny the
6 allegations in paragraph 11.

7 12. PacifiCorp has insufficient information or knowledge to admit or deny the
8 allegations in paragraph 12.

9 13. PacifiCorp has insufficient information or knowledge to admit or deny the
10 allegations in paragraph 13, in part, because it is unclear what is meant by “Community Solar
11 Program operating revenues.”

12 14. PacifiCorp has insufficient information or knowledge to admit or deny the
13 allegations in paragraph 14. PacifiCorp denies that the failure of Sunthurst’s projects would cause
14 irreparable harm to “all of the parties above, and Oregonians at large[.]”

15 **Direct Transfer Trip**

16 15. PacifiCorp admits in part and denies in part the allegations in paragraph 15. DTT
17 is required as a part of the interconnection facilities for the five projects. The requirement for DTT
18 was identified as a result of interconnection studies. PacifiCorp is required to install DTT
19 equipment to safely and reliably interconnect Sunthurst’s projects. PacifiCorp denies the
20 remaining allegations in paragraph 15.

21 16. PacifiCorp has insufficient information or knowledge to admit or deny the
22 allegations in paragraph 16. The estimated costs of DTT are set forth in each project’s applicable
23 interconnection study.

1 17. PacifiCorp denies the allegations in paragraph 17 because they misrepresent the
2 Commission’s findings in Order No. 24-068 and Order No. 24-068 speaks for itself.

3 18. PacifiCorp admits in part and denies in part the allegations in paragraph 18.
4 PacifiCorp admits that the requirement to install DTT results from a comprehensive
5 interconnection study process that takes into account the interconnection customer’s proposed
6 generating capacity relative to the minimum load on the applicable distribution circuit, among
7 other factors. PacifiCorp denies the remaining allegations in paragraph 18.

8 19. PacifiCorp denies the allegations in paragraph 19.

9 20. PacifiCorp admits in part and denies in part the allegations in paragraph 20.
10 Pacificorp admits that the interconnection studies for Sunthurst’s projects explain why DTT is
11 required for their projects and that unintentional islanding during system faults is one reason DTT
12 is required. PacifiCorp denies the remaining allegations in paragraph 20.

13 21. PacifiCorp admits in part and denies in part the allegations in paragraph 21.
14 PacifiCorp admits that the circuits to which Sunthurst’s projects will interconnect do not contain
15 rotating generators. PacifiCorp denies the remainder of the allegations.

16 22. PacifiCorp denies the allegations in paragraph 22 to the extent that the allegations
17 suggest that the DTT requirements for Sunthurst’s projects are unnecessary.

18 23. PacifiCorp has insufficient information or knowledge to admit or deny the
19 allegations in paragraph 23.

20 24. PacifiCorp neither admits nor denies the allegations in paragraph 24. The
21 Commission’s Order No. 24-068 speaks for itself. However, in Order No. 24-068, the Commission
22 specifically approved the use of DTT for generators like Sunthurst.

1 25. PacifiCorp admits the allegations in paragraph 25 that the Commission recently
2 updated its small generator interconnection rules to implement IEEE 1547-2018 but denies that
3 the new rules authorize the installation of DTT equipment on the low side of the transformer or
4 that installing DTT equipment on the low side of the transformer is substantially lower cost than
5 the requirements applicable to Sunthurst.

6 26. PacifiCorp neither admits nor denies the allegations in paragraph 24. IEEE 1547-
7 2018 speaks for itself.

8 27. PacifiCorp admits the allegations in paragraph 27.

9 28. PacifiCorp denies the allegations in paragraph 28.

10 **Planned Duration of Construction**

11 29. PacifiCorp admits in part and denies in part the allegations in paragraph 29.
12 PacifiCorp agrees that the standard form interconnection agreement approved by the Commission
13 includes project milestones. PacifiCorp admits that the project milestone dates are negotiated
14 between PacifiCorp and the interconnection customer and that the Commission does not
15 individually approve each interconnection agreement. PacifiCorp denies the remainder of the
16 allegations.

17 30. PacifiCorp admits in part and denies in part the allegations in paragraph 30.
18 PacifiCorp admits that in March 2023 Sunthurst was in breach of its interconnection agreements
19 for failure to make progress payments. PacifiCorp admits that Sunthurst sought to cure its breach
20 by requesting extensions to the payment milestones included in the agreements. PacifiCorp admits
21 that it agreed to Sunthurst’s proposed payment milestones and then adjusted the remaining project
22 milestones in the interconnection agreements to account for delayed payments. PacifiCorp admits
23 that Sunthurst then signed each amendment without objection. PacifiCorp denies the remainder
24 of the allegations.

1 31. PacifiCorp neither admits nor denies the allegations in paragraph 31. The amended
2 interconnection agreements speak for themselves.

3 32. PacifiCorp denies the allegations in paragraph 32.

4 33. PacifiCorp neither admits nor denies the allegations in paragraph 33. The amended
5 interconnection agreements speak for themselves.

6 34. PacifiCorp denies the allegations in paragraph 34.

7 35. PacifiCorp has insufficient information or knowledge to admit or deny the
8 allegations in paragraph 35.

9 36. PacifiCorp has insufficient information or knowledge to admit or deny the
10 allegations in paragraph 36 that the agreed upon construction timelines in Sunthurst’s amended
11 interconnection agreements undermine the viability of its projects. The Company disagrees that
12 the agreed upon construction times undermine the CSP.

13 **Advance Payment Requirements**

14 37. PacifiCorp admits in part and denies in part the allegations in paragraph 37.
15 PacifiCorp agrees that the standard form interconnection agreement approved by the Commission
16 includes progress payments and that Sunthurst’s interconnection agreements include progress
17 payments. PacifiCorp admits that the progress payment dates are negotiated between PacifiCorp
18 and the interconnection customer and that the Commission does not individually approve each
19 interconnection agreement. However, OAR 860-082-0035(5) requires interconnection customers
20 to either make progress payments or pay a deposit equal to 100 percent of the estimated
21 interconnection costs. Sunthurst agreed to make progress payments instead of paying a 100
22 percent deposit and the progress payment dates included in Sunthurst’s interconnection agreements
23 were proposed by Sunthurst.

1 38. PacifiCorp admits that it executed amended interconnection agreements for all five
2 Sunthurst projects that include progress payment dates agreed to by Sunthurst.

3 39. PacifiCorp neither admits nor denies the allegations in paragraph 39. The amended
4 interconnection agreements speak for themselves.

5 40. PacifiCorp neither admits nor denies the allegations in paragraph 40. The amended
6 interconnection agreements speak for themselves.

7 41. PacifiCorp denies the allegations in paragraph 41.

8 42. PacifiCorp admits that the Commission’s rules do not require PacifiCorp to pay
9 interest to interconnection customers for progress payments.

10 43. PacifiCorp has insufficient information or knowledge to admit or deny the
11 allegations in paragraph 43.

12 44. PacifiCorp has insufficient information or knowledge to admit or deny the
13 allegations in paragraph 44 that the progress payments required by the Commission’s rules
14 substantially hinder the viability of Sunthurst’s projects. PacifiCorp denies the remainder of the
15 allegations in paragraph 44.

16 **Withholding Power Purchase Agreements to Interconnection Agreements**

17 45. PacifiCorp admits allegations in paragraph 45.

18 46. Paragraph 46 consists of conclusions of law and does not require a response.

19 47. PacifiCorp admits that PPAs are processed through its Energy Supply Management
20 (ESM) function and that PacifiCorp’s transmission function is separate, as required by the Federal
21 Energy Regulatory Commission.

22 48. PacifiCorp denies the allegations in paragraph 48.

23 49. PacifiCorp denies the allegations in paragraph 49.

1 50. PacifiCorp neither admits nor denies the allegations in paragraph 50. The
2 Commission’s orders in docket UM 1129 speak for themselves.

3 51. PacifiCorp neither admits nor denies the allegations in paragraph 51. The
4 Commission’s Order No. 21-097 speaks for itself.

5 52. PacifiCorp denies the allegation in paragraph 52.

6 53. PacifiCorp denies the allegations in paragraph 53 and to the extent the allegations
7 are legal conclusions, they require no reply.

8 54. PacifiCorp denies the allegation in paragraph 54 that execution of its PPAs was
9 delayed due to PacifiCorp. PacifiCorp has insufficient knowledge to admit or deny the impact of
10 the execution of its PPAs had on Sunthurst’s financing.

11 55. PacifiCorp has insufficient information or knowledge to admit or deny the
12 allegations in paragraph 55.

13 56. PacifiCorp has insufficient information or knowledge to admit or deny the
14 allegations in paragraph 56.

15 **Line Extension at PRS1 and PRS2**

16 57. PacifiCorp denies the allegations in paragraph 57.

17 58. PacifiCorp has insufficient information or knowledge to admit or deny the
18 allegations in paragraph 58. The Company is not aware of any customer requesting service in the
19 industrial park in Pilot Rock referenced in paragraph 58 and there are no plans to extend service
20 to the industrial park at this time or within the next 18 months.

21 59. To the extent that the allegations in paragraph 59 describe the interconnection
22 requirements and facilities for PRS1 and PRS2, those requirements are set forth in their respective
23 interconnection agreements. The Company disagrees that the proposed re-design of the

1 interconnection facilities described in paragraph 59 is reasonable. The Company has insufficient
2 information or knowledge to admit or deny the preferences of the City of Pilot Rock.

3 60. To the extent that the allegations in paragraph 60 are referencing letters attached to
4 the Complaint, the letters speak for themselves. PacifiCorp agrees that it has not directly
5 responded to the letters.

6 61. PacifiCorp denies the allegations in paragraph 61.

7 **Buckaroo 1 Battery Energy Storage**

8 62. PacifiCorp has insufficient information or knowledge to admit or deny the
9 allegations in paragraph 62.

10 63. The allegations in paragraph 63 describing Commission orders and rules do not
11 require a response; the orders and rules speak for themselves.

12 64. PacifiCorp agrees that adding BESS to Buckaroo 1 requires amending the
13 interconnection agreement and executing a new PPA. PacifiCorp agrees that it has not refused to
14 amend the interconnection agreement and negotiate a new PPA. PacifiCorp denies that
15 “Sunthurst’s repeated requests have gone unanswered.” In fact, Sunthurst has never requested a
16 new PPA incorporating BESS and Sunthurst failed to respond to PacifiCorp’s request that
17 Sunthurst provide the required information to amend its interconnection agreement.

18 65. PacifiCorp denies the allegations in paragraph 65.

19 66. PacifiCorp has insufficient information or knowledge to admit or deny the
20 allegations in paragraph 66.

21 **C. Legal Claim**

22 **Complainants First Claim for Relief—Modification**

23 67. Paragraph 67 is a heading stating the First Claim for Relief and does not require a
24 response.

1 68. PacifiCorp incorporates all of its answers to the allegations in the preceding
2 paragraphs.

3 69. PacifiCorp neither admits nor denies the allegations in paragraph 69. The
4 interconnection agreements speak for themselves.

5 70. PacifiCorp neither admits nor denies the allegations in paragraph 70. The
6 interconnection agreements speak for themselves.

7 71. PacifiCorp admits that PRS1 and PRS2 signed small generator interconnection
8 agreements and Tutuilla, Buckaroo 1 and Buckaroo 2 signed CSP interconnection agreements. To
9 the extent the allegations in paragraph 71 characterize the similarities between the interconnection
10 agreements, the interconnection agreements speak for themselves.

11 72. The allegations in paragraph 72 are legal conclusions that require no response.

12 73. The allegations in paragraph 73 are legal conclusions that require no response. The
13 Commission’s rules speak for themselves.

14 74. PacifiCorp denies the allegations in paragraph 74.

15 75. PacifiCorp denies the allegations in paragraph 75.

16 76. PacifiCorp denies the allegations in paragraph 76.

17 77. PacifiCorp denies the allegations in paragraph 77.

18 78. PacifiCorp denies the allegations in paragraph 78.

19 79. PacifiCorp denies the allegations in paragraph 79.

20 **Complainant’s Second Claim for Relief—Violation of OAR 860-082-0035(4)**

21 80. PacifiCorp incorporates all of its answers to the allegations in the preceding
22 paragraphs.

23 81. PacifiCorp denies the allegations in paragraph 81.

1 **Complainant’s Third Claim for Relief—Implied Covenant of Good Faith when**
2 **Performing the Interconnection Agreements and PPAs**

3 82. PacifiCorp incorporates all of its answers to the allegations in the preceding
4 paragraphs.

5 83. The allegations in paragraph 83 are legal conclusions that require no response.

6 84. PacifiCorp denies the allegations in paragraph 84.

7 **D. Prayer for Relief**

8 85. PacifiCorp incorporates all of its answers to the allegations in the preceding
9 paragraphs.

10 86. PacifiCorp denies that the relief requested in paragraph 86 should be granted.

11 87. The Company respectfully requests the Commission issue an order finding that
12 Sunthurst is not entitled to any relief; and granting such other relief as the Commission deems just
13 and appropriate.

V. AFFIRMATIVE DEFENSES

14 **A. Claim Preclusion**

15 88. PacifiCorp incorporates all the preceding paragraphs.

16 89. On September 29, 2020, Sunthurst filed a complaint against PacifiCorp related to
17 the interconnection of PRS1 and PRS2. The complaint was docketed as UM 2118. In its
18 complaint, Sunthurst challenged the estimated interconnection costs and requirements for PRS1
19 and PRS2.

20 90. In testimony filed in docket UM 2118, Sunthurst specifically challenged
21 PacifiCorp’s requirement that PRS1 and PRS2 install DTT as a requirement of the project’s

1 interconnection.⁵⁴ Sunthurst also specifically challenged the line extension for PRS1 and PRS2
2 and argued that retail customers should bear the costs of the line because the line would be used
3 to service other retail customers in the vicinity of PRS1 and PRS2.

4 91. The Commission dismissed Sunthurst’s complaint with prejudice.⁵⁵

5 92. Sunthurst’s First Claim for Relief, Count 1, Second Claim for Relief, and Third
6 Claim for Relief, Count 1 reassert claims that were raised in docket UM 2118 and are barred in
7 their entirety by claim preclusion. Alternatively, Sunthurst’s First Claim for Relief, Count 1 and
8 Second Claim for Relief are barred by claim preclusion relative to PRS1 and PRS2.

9 **B. Breach of Contract**

10 93. PacifiCorp incorporates all the preceding paragraphs.

11 94. In accordance with the May 2023 amended interconnection agreement for PRS1,
12 Sunthurst was required to provide a progress payment of \$200,000 by January 2, 2024.

13 95. In accordance with the May 2023 amended interconnection agreement for PRS2,
14 Sunthurst was required to provide a progress payment of \$138,500 by January 2, 2024.

15 96. In accordance with the May 2023 amended interconnection agreement for Tutuilla,
16 Sunthurst was required to provide a progress payment of \$160,00 by January 2, 2024.

17 97. In accordance with the May 2023 amended interconnection agreement for
18 Buckaroo 1, Sunthurst was required to provide a progress payment of \$61,00 by January 2, 2024.

19 98. In accordance with the May 2023 amended interconnection agreement for
20 Buckaroo 2, Sunthurst was required to provide a progress payment of \$47,200 by January 2, 2024.

⁵⁴ See e.g., *Sunthurst v. PacifiCorp*, Docket No. UM 2118, Sunthurst/100, Hale/5–6 and Sunthurst/200, Beanland/5, 7, 9–11, 29.

⁵⁵ Order No. 21-296.

1 99. Sunthurst failed to make any of the progress payments required by each of its five
2 interconnection agreements. On February 7, 2024, Pacificorp sent notices of breach to Sunthurst
3 for each of the five projects. Sunthurst has not cured the breach.

4 100. Sunthurst materially breached each of its five interconnection agreements by failing
5 to make the required progress payments.

6 **C. Failure to State a Claim**

7 101. PacifiCorp incorporates all the preceding paragraphs.

8 102. Sunthurst’s First Claim for Relief, Count 3 fails to state ultimate facts sufficient to
9 constitute a claim.

10 103. Sunthurst’s First Claim for Relief, Count 1 and Second Claim for Relief fail to state
11 ultimate facts sufficient to constitute a claim.

12 104. Sunthurst’s Third Claim for Relief fails to state ultimate facts sufficient to
13 constitute a claim.

VI. PACIFICORP’S COUNTERCLAIM

14 For PacifiCorp’s Counterclaims, PacifiCorp alleges as follows:

15 **A. First Claim for Relief—Declaration that Sunthurst has breached its interconnection**
16 **agreements.**

17 105. PacifiCorp incorporates all the preceding paragraphs.

18 106. PacifiCorp is entitled to relief in the form of a Commission order: (a) finding that
19 Sunthurst has breached each of the five interconnection agreements by failing to meet its
20 obligations; (b) finding that PacifiCorp has provided effective notice of default; (c) finding that
21 PacifiCorp agreed not to terminate the interconnection agreements while docket UM 2322 is
22 pending; and (d) finding that if Sunthurst has not cured its defaults within 30 days after a final

1 Commission order is issued in this docket, then PacifiCorp may terminate the interconnection
2 agreements.

3 107. PacifiCorp is entitled to relief in the form of a Commission order finding that
4 Sunthurst has breached its interconnection agreements by failing to meet its obligations to provide
5 progress payments in accordance with the schedule Sunthurst proposed.

6 108. PacifiCorp is entitled to relief in the form of a Commission order finding that if
7 Sunthurst cures its breach within 30 days after a final Commission order is issued in this docket,
8 then PacifiCorp is authorized to update the project milestones and progress payment schedules to
9 account for the delays resulting from Sunthurst's breach.

10 109. PacifiCorp is entitled to whatever other relief the Commission deems appropriate
11 on PacifiCorp's First Claim for Relief.

VII. PACIFICORP'S PRAYERS FOR RELIEF

12 PacifiCorp respectfully requests that the Commission:

13 110. Deny Sunthurst's Prayers for Relief and dismiss the Complaint with prejudice.

14 111. Grant PacifiCorp's counterclaims and issue an order finding:

15 1. PacifiCorp complied with its obligations under the interconnection
16 agreements and the Commission's rules.

17 2. Sunthurst breached its five interconnection agreements by failing to make
18 the required progress payments.

1 3. PacifiCorp may terminate the five interconnection agreements if Sunthurst
2 has not cured its breach within 30 days after issuance of a final Commission order.

Respectfully submitted this 17th day of May 2024.

By: 

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