

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2408

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of the Water Use
and Conveyance Agreement and Request
for Waiver of Competitive Bidding Rules.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on April 28, 2026, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



Alison Lackey
Chief Administrative Law Judge



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

Docket No. UM 2408
April 20, 2026
Page 2

bidding rules when “there is a time-limited opportunity to acquire a resource of unique value to the electric company’s customers.” In this case, the electric Company must, “within 30 days of seeking to acquire a resource”, “file a report with the Commission explaining the relevant circumstances” (OAR 860-089-0100(4)).

Pursuant to OAR 860-089-0010(2), “the Commission may waive any of the Division 089 rules for good cause shown. A request for waiver must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition.” However, “if a request for waiver is filed by an electric company after it acquires a resource, granting, if any, of the waiver request does not result in or equate to the Commission’s acknowledgment of the resource acquisition” (OAR 860-089-0010(2)(b)).

ORS 757.480 requires public utilities doing business in Oregon to seek prior approval from the Commission before leasing utility property whose value exceeds one million or before encumbering the whole or any part of the property of the public utility necessary or useful in the performance of the public utility’s duties to the public.

OAR 860-027-0025 sets forth the information required to support an application seeking approval for the sale, or disposal of utility property.

OAR 860-027-0025(1)(I) requires that the applicant show that the proposed transaction is consistent with the public interest. The Commission has interpreted the phrase “consistent with the public interest” regarding asset sales to require a showing of “no harm to the public.”¹

Analysis

Background

On October 21, 2025, PacifiCorp filed an application to seek approval for a Water Use and Conveyance Agreement (Water Use Agreement) between the Company and US SFR, a subsidiary of TerraPower.² At the same time, PacifiCorp requested the Commission waive competitive bidding rules to allow the Company to enter into a Power Purchase Agreement with US SFR to be the sole energy off taker of the KU1 project. The Company executed the Water Use Agreement on May 7, 2025, and the PPA on July 23, 2025, although the agreements terminate if PacifiCorp does not receive

¹ Docket No. UP 168, [Order No. 00-112](#), February 29, 2000, p. 6.

² Docket No. UM 2408, [In the Matter of PACIFICORP, dba PACIFIC POWER, Application for Approval of the Water Use and Conveyance Agreement and Request for Waiver of Competitive Bidding Rules](#), October 21, 2025.

Docket No. UM 2408
 April 20, 2026
 Page 3

regulatory approval in relevant jurisdictions. Staff and NewSun Energy LLC (NewSun) filed comments on February 26, 2026.³ The Company replied on March 29, 2026.⁴

The KU1 project is a planned 345-megawatt (MW) sodium-cooled fast reactor coupled with a molten salt integrated energy storage system in proximity to PacifiCorp's existing Naughton Power Plant (currently being converted from coal to gas) in Kemmerer, Wyoming. Coupled with an integrated energy storage system, KU1 is supposed to offer flexible operation from 100 to 500 MW for up to 5.5 hours. KU1 is partly financed by the US Department of Energy's (DOE) Advanced Reactor Demonstration Program (ARDP) and would represent the first sodium-cooled fast reactor and the first small-modular reactor designed and built in the US. KU1 is supposed to become operational in 2032. The Water Use Agreement provides water necessary for the operation of KU1. As long as the PPA is in effect, PacifiCorp plans to utilize its existing water and storage rights related to Naughton to provide KU1 with water [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

PacifiCorp did not follow applicable competitive bidding rules as stated in Oregon Administrative Rules Division 089 when signing the PPA with US SFR. The rules would have required PacifiCorp to either run a competitive procurement process (issuing a request for proposals – RFP – and engaging an independent evaluator) or claim an exception under OAR 860-089-0100(3). It is likely that the PPA is a “time-limited opportunity” of “unique value” and the Company could have utilized this exception by filing a report with the Commission “within 30 days of seeking to acquire a resource” (OAR 860-089-0100(4)). Instead, PacifiCorp is seeking a waiver of applicable rules for good cause under OAR 860-089-0010(2). Regarding the CBR elements to be waived, the application requests a blanket waiver. For clarity and specificity, Staff believes it is more appropriate to only waive OAR 860-089-0100 through OAR 860-089-0500, which are the rules directly applicable to PacifiCorp's request.

ORS 757.480 (1)(a) and (b) requires public utilities doing business in Oregon to seek prior approval from the Commission before leasing utility property whose value exceeds one million or before encumbering the whole or any part of the property of the public utility necessary or useful in the performance of the public utility's duties to the public. As such, PacifiCorp seeks approval of the Water Use Agreement and claims that such approval is consistent with the public interest as required by OAR 860-027-0025(1)(l).

³ Docket No. UM 2408, [Staff Comments](#), February 26, 2026; [NewSun Energy LLC's Initial Comments](#), February 26, 2026.

⁴ Docket No. UM 2408, [PacifiCorp's Response Comment](#), March 20, 2026.

Docket No. UM 2408
April 20, 2026
Page 4

Based on the analysis below, Staff agrees with the Company and recommends the Commission approve the Water Use Agreement.

Competitive Bidding Rules

Several waivers of competitive bidding rules have been requested in the past.⁵ When considering such waivers, Staff has looked for guidance from the stated purpose of competitive bidding rules which is to “minimize long-term energy costs and risks, complement the integrated resource planning (IRP) process, and establish a fair, objective, and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms.”⁶ In a recent case where the Commission granted a waiver, Staff analyzed whether the contract 1) minimizes long-term costs and risks, 2) complements the IRP process, and 3) was conducted in a manner that is transparent, understandable, and fair.”⁷ In this case, Staff examined those same factors, together with an assessment of the benefits and risks of the PPA, as well as whether the resource could have been reasonably acquired through an RFP. This slightly diverges from PacifiCorp’s reasoning, which claims a time-limited opportunity of unique value, even though the Company did not utilize the exception that would be applicable to such resources.

After review of the PPA, Staff believes there are modest financial benefits with minimal risks. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

⁵ Waivers for the acquisition of specific resources were most recently requested in in Docket Nos. [UM 2176](#), [UM 2423](#), and [UM 2431](#). Waiver for individual elements of the RFP process were recently requested in Docket Nos. [UM 2255](#), [UM 2274](#), [UM 2317](#), [UM 2357](#), [UM 2383](#), and [UM 2434](#).
⁶ OAR 860-089-0010(1).
⁷ Docket No. UM 2176, [Order No. 21-328](#), Appendix A, September 27, 2021, p. 6.

Docket No. UM 2408
 April 20, 2026
 Page 6

- PacifiCorp will get insights into the construction, operation, and performance of a new non-emitting technology without bearing any of the ownership costs and risks, including a broad indemnification agreement.
- PacifiCorp will get access to ancillary services if KU1 can provide them.
- **[BEGIN CONFIDENTIAL]** [REDACTED]
[END CONFIDENTIAL]
- PacifiCorp will gain experience that would position it well to acquire additional reactors if the project is successful.

Staff believes these substantive benefits provide good cause to grant PacifiCorp a waiver to enter the PPA. Staff finds it highly unlikely that PacifiCorp could have realized these benefits through a competitive bidding process. US SFR is partially financed by the federal government which comes with various requirements that make it likely that they would have found another partner for the demonstration project instead of going through a lengthy RFP process. Furthermore, Staff finds it unlikely that PacifiCorp would have received bidders in an RFP proposing to build a first-of-a-kind project without passing on financial risks.

It is important to note that PacifiCorp has contemplated KU1 in IRPs going back five years. In assessing the 2021 IRP, the Commission opined that “we are not persuaded that this project should be included in an RFP, as Staff suggests.”⁸ The Commission consistently raised concerns about the underlying performance assumptions and uncertainties, stating in 2022 that “we believe acknowledgment is premature given the significant uncertainties that remain about this technology in general and this specific project's development costs and timeline.”⁹ Similar issues were raised in the 2023 IRP.¹⁰ While the 2025 IRP does not contradict the benefits of the proposed PPA, it cannot not be relied on to assess the projects benefits because the underlying assumptions vary substantively.¹¹ At the same time Staff believes the proposed PPA complements the IRP process in the sense that it mitigates the risks (such as construction costs overruns or viability of the technology), raised by stakeholders in the IRP process.

While Staff supports a waiver for good cause, Staff believes PacifiCorp could have acted more transparently and effectively. Informing the Commission only after a

⁸ Docket No. LC 77, [Order No. 22-178](#), May 23, 2022, p. 10.

⁹ Docket No. LC 77, [Order No. 22-178](#), May 23, 2022, p. 9.

¹⁰ Docket No. LC 82, [Order No. 24-073](#), March 19, 2024.

¹¹ **[BEGIN CONFIDENTIAL]** [REDACTED]
[END CONFIDENTIAL] See, Docket No. LC 85, [Staff Report](#), January 6, 2026, p. 34.

Docket No. UM 2408
April 20, 2026
Page 7

resource decision has been made is not in the spirit of the competitive bidding rules, and makes it more cumbersome for the Commission and stakeholders to weigh in. In previous cases, Staff has encouraged utilities to reach out before finalizing potential resource acquisitions to discuss the best regulatory path.¹² Staff believes the Commission should reinforce this principle given the dire resource needs of the region and strict timelines for complying with various clean energy laws.

The Company states:

Due to the inherently commercially sensitive and dynamic nature of the negotiations, PacifiCorp can provide only limited updates regarding their status during pendency. PacifiCorp did, however, notify the Commission that it was engaged in commercial negotiations.¹³

The Company further explains that it pursued a waiver request instead of submitting an exception report “in order to obtain public input, given the demonstrated stakeholder interest in the KU1 project.”¹⁴ Staff agrees that in this case, a waiver request was the best regulatory option.

NewSun filed comments in this docket stating “the Commission should reject PacifiCorp’s petition for a waiver of the competitive bidding rules because the “good cause” standard is not met.”¹⁵ In its argument, NewSun puts forward that KU1 is not a time-limited opportunity of unique value, which, as Staff explained above, would be necessary for an exception but not for a good cause waiver. At the same time, NewSun does not present any evidence that would contradict Staff’s analysis. Staff reviewed documents related to the PPA, as NewSun requested, and found that in terms of power costs there are modest benefits and minimal risks. The unique value of KU1 is that PacifiCorp will get experience with the construction, operation, and performance of a new non-emitting technology without bearing any of the ownership costs and risks. NewSun misunderstands the objective of this project when stating that energy and capacity needs could have been met through alternative means. Staff does not agree with NewSun that PacifiCorp’s objective would have been better realized through utilization of the competitive bidding process in this instance.

¹² Docket No. UM 2176, [Order No. 21-328](#), Appendix A, September 27, 2021, p. 6.

¹³ Docket No. UM 2408, [In the Matter of PACIFICORP, dba PACIFIC POWER, Application for Approval of the Water Use and Conveyance Agreement and Request for Waiver of Competitive Bidding Rules](#), October 21, 2025, p. 3.

¹⁴ Ibid.

¹⁵ Docket No. UM 2408, [NewSun Energy LLC’s Initial Comments](#), February 26, 2026, p. 4.

Docket No. UM 2408
April 20, 2026
Page 8

Recommendation 1: Waive competitive bidding rules within OAR 860-089-0100 through OAR 860-089-0500 for the power purchase agreement recently executed by PacifiCorp and US SFR.

Water Use Agreement

The Commission has generally treated the “consistent with the public interest” standard in OAR 860-027-0025(1)(l) as meaning there is “no harm” to ratepayers from the lease or encumbrance of a utility property.¹⁶ Staff assessed the Water Use Agreement and finds that it does not cause ratepayers harm to the extent that it does not impose any costs in excess of the benefits that will result from approval, such as enabling the PPA.

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[REDACTED] **[END CONFIDENTIAL]** The

Naughton Plant’s water rights were acquired in 1963 for \$690.97 with a net book value (NBV) of \$59.56 as of December 31, 2025.¹⁷ The Water Use Agreement will not negatively impact any up or downstream water rights.¹⁸ While PacifiCorp has not conducted any valuation studies of the resale value of the water rights, Staff believes it is reasonable to treat the value as nominal as long as the PPA is in effect.

As a result, Staff recommends that the Commission approve the Water Use Agreement. The Company complied with the filing requirements listed in OAR 860-027-0025.

Recommendation 2: Approve the Water Use Agreement between PacifiCorp and US SFR.

Conclusion

Based on review of the PPA, analysis of the terms, and consultation with Stakeholders, Staff recommends the Commission find good cause to waive competitive bidding rules within OAR 860-089-0100 through OAR 860-089-0500 (Recommendation 1). Further, Staff recommends the Commission approve the Water Use Agreement as consistent with the public interest (Recommendation 2).

¹⁶ Docket No. UP 168, [Order No. 00-112](#), February 29, 2000, p. 5f.
¹⁷ PacifiCorp Response to OPUC Information Request 1.
¹⁸ PacifiCorp Responses to OPUC Information Request 7, 9, and 15.

Docket No. UM 2408
April 20, 2026
Page 9

PROPOSED COMMISSION MOTION:

Waive competitive bidding rules within OAR 860-089-0100 through OAR 860-089-0500 for the power purchase agreement recently executed by PacifiCorp and US SFR and approve the Water Use Agreement between PacifiCorp and US SFR.

RA1 - UM 2408