ORDER NO. 26-306

ENTERED Aug 24 2026

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2024

In the Matter of ALLIANCE OF WESTERN ENERGY CONSUMERS, Petition for Investigation Into Long-Term Direct Access Programs.	ORDER

DISPOSITION: APPLICATIONS FOR RECONSIDERATION/REHEARING AND CLARIFICATION GRANTED IN PART AND DENIED IN PART.

I. BACKGROUND

A. Procedural History

After a lengthy contested case process, the Commission issued Order No. 26-153, addressing numerous issues related to the design of direct access (DA) programs, on May 7, 2026. On June 26, 2026, PacifiCorp, dba Pacific Power, filed an application for reconsideration. Calpine Energy Solutions, LLC (Calpine), Portland General Electric Company (PGE), and the Northwest & Intermountain Power Producers Coalition (NIPPC) responded to PacifiCorp's application on July 13, 2026.

On July 6, 2026, NewSun Energy LLC filed an application for rehearing or reconsideration and a motion for clarification. On the same day, NIPPC and the Alliance of Western Energy Consumers (AWEC) jointly filed an application for reconsideration and/or clarification as well. PacifiCorp, PGE, and Staff of the Oregon Public Utility Commission responded to NewSun, NIPPC, and AWEC on July 21, 2026.

B. Legal Standard

Pursuant to ORS 756.561, any party may file for rehearing or reconsideration within 60 days of an order. Under the Commission's rules, promulgated under that section:

The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:

(a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;

(b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;

(c) An error of law or fact in the order that is essential to the decision; or

(d) Good cause for further examination of an issue essential to the decision.

II. DISCUSSION

A. Capacity Backstop Charge

1. Order No. 26-153

In our May 7, 2026 order, we found that the utilities should be required to develop a capacity backstop product where the DA customer can pay to be included in the utility's Resource Adequacy (RA) load. We limited the availability of that capacity backstop charge to a three-year period, ending October 1, 2029, stating that by that time, we expected electricity service suppliers (ESSs) to be participating in an RA program on their own. Understanding that the RA product would take time to develop, we directed the utilities to make filings in new, utility-specific dockets within 90 days of the May 7, 2026 decision. We stated that each utility should base prices on the avoided cost of capacity and transmission, using a calculation similar to that used to calculate avoided costs in the PURPA context.

2. PacifiCorp's Application for Reconsideration

a. PacifiCorp

PacifiCorp seeks reconsideration of the Commission's requirement that it provide a capacity backstop product to DA customers. First, PacifiCorp argues that it does not have excess capacity that can be used to meet its newly expanded RA requirement. Second, PacifiCorp states, given that the region is currently short, there is no evidence that it will be able to procure additional capacity on the market. Additionally, PacifiCorp argues, if the product also includes transmission service, it similarly does not have excess RA-compliant firm point-to-point transmission that can be used for non-retail DA customers.

PacifiCorp argues that requiring it to provide backstop capacity materially increases the risks of cost-shifting. While parties argue that the capacity backstop charge would not shift costs so long as it was properly structured, PacifiCorp states that it is not yet clear that the capacity backstop charge is properly structured.

Next, PacifiCorp argues that shifting the RA obligation to the company effectively creates competition between retail customers and non-retail DA customers for the same scarce resources. If instead, PacifiCorp states, ESSs retained the obligation to provide capacity to DA customers, both PacifiCorp and ESSs could focus on meeting the RA obligations for the customers they serve.

PacifiCorp additionally argues that the timelines the Commission ordered are unrealistic—namely, it states that there is a multi-year timeline to procure new capacity, but the requirement ends in three years, likely around the time that newly procured capacity would come online.

PacifiCorp argues that, to the extent the Commission believes that Oregon's RA requirements are unobtainable or otherwise require revision, the appropriate solution is for the Commission to revise its RA program rather than to move the planning obligation to PacifiCorp and cost of service (COS) customers.

Finally, PacifiCorp argues that imposition of the capacity backstop charge raises concern that a state may interfere with the Federal Energy Regulatory Commission's (FERC) exclusive jurisdiction over wholesale sales and transmission.

b. Calpine

Calpine opposes PacifiCorp's application for reconsideration of the capacity backstop charge. First, Calpine states that PacifiCorp's argument that the order's capacity backstop requirement introduces risk of cost shifts to non-DA customers was previously made and does not constitute good cause to reconsider the order. Second, Calpine argues that PacifiCorp has made new factual assertions—that PacifiCorp does not have excess capacity that can be used to meet its newly expanded RA requirement—which are not supported by the record.

Next, Calpine argues that PacifiCorp overstates the requirements of the order. In particular, PacifiCorp states: "PacifiCorp no longer includes those customers in its network transmission service load. As such, PacifiCorp would need to acquire incremental point-to-point transmission service to demonstrate RA compliance for these non-retail [Long Term Direct Access (LTDA)] customers."[1] But, Calpine says, under the order's capacity backstop framework, the customer would continue to be served by the ESS's procured network transmission on PacifiCorp's system, which is necessary to deliver energy. PacifiCorp would be responsible for the RA resource and the off-system transmission, if any, needed to reach PacifiCorp's system with that RA capacity. Calpine further says that PacifiCorp overstates the potential magnitude of the capacity backstop load for which it will likely be responsible by construing the capacity backstop requirement to apply to all LTDA customers, when the order approved it as one temporary option for customers to elect.

Even if the Commission does accept PacifiCorp's factual representations, Calpine argues, the best solution to the problems raised by PacifiCorp would be to extend the time for the capacity backstop option as suggested by NIPPC and AWEC's application for reconsideration (see Section 3, *infra)*.

Calpine also takes issue with PacifiCorp's claims of federal preemption, stating that the Federal Power Act preserves state jurisdiction over retail rates for sales to the end-use customer. Calpine argues that the order's design of the capacity backstop charge as a retail charge paid by a retail customer to the utility for the RA capacity places the capacity backstop charge squarely within the Commission's jurisdiction.

Finally, Calpine argues to the extent that the Commission chooses to eliminate the capacity backstop charge for PacifiCorp, it should retain it for PGE.

c. NIPPC

NIPPC also opposes PacifiCorp's request to eliminate the capacity backstop charge. Like Calpine, NIPPC argues that PacifiCorp does not have record support for its assertion that it cannot obtain capacity. Likewise, NIPPC argues that the record does not support PacifiCorp's assertion that the capacity backstop charge could lead to cost-shifting.

Next, NIPPC argues that PacifiCorp could have raised its federal preemption argument during the proceeding, but did not, so it is procedurally barred. NIPPC cites to

[1] PacifiCorp's Application for Reconsideration at 6.

Commission rule and precedent stating that "new matter[s]" are "beyond the scope of reconsideration."[2]

NIPPC additionally argues that PacifiCorp's preemption argument is incorrect, stating that because DA customers, not ESSs, will pay the capacity backstop charge, it is a retail sale over which this Commission has jurisdiction. NIPPC notes that in one place—and only one place—the order suggests that "ESSs * * * should pay the full amount of the costs,"[3] but states that in all other places the order is clear that DA customers will pay the capacity backstop charge.

Like Calpine, NIPPC states that the solution to the arguments raised by PacifiCorp is to extend the capacity backstop charge, as discussed in NIPPC and AWEC's application for reconsideration.

3. NIPPC and AWEC's Application for Reconsideration

a. NIPPC and AWEC

NIPPC and AWEC also seek reconsideration of an element of the capacity backstop charge, specifically asking that it be extended until October 1, 2031, through the June 2031 compliance period. NIPPC and AWEC state that this is consistent with, and aligns with, the Commission's recent waiver of penalties for the State Program's July 2027 to June 2029 compliance period. NIPPC and AWEC state that this revision to the Commission's order is necessary because there is unlikely to be a new RA program before the end of 2026, which is when DA customers will need to make decisions regarding ongoing DA participation for the July 2029 to June 2031 compliance period. This, NIPPC and AWEC state, is because due to return to COS notice period, existing DA customers must make service-election decisions two or more years before the next compliance period. Thus, they argue, for the capacity backstop charge to be a meaningful temporary bridge during this time of uncertainty, it must apply to the compliance period that begins during the year that is two years after the end of this year—which is the July 2029 to June 2031 compliance period.

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[2] NIPPC Response to PacifiCorp Application for Reconsideration at 2, nn 1-2 (citing OAR 860-001-0720(3)(b); *In re Application of Portland General Electric Co. Authorization to Defer Costs Related to Implementing Senate Bill 1149 & In re Application of PacifiCorp Authorization to Defer Costs Related to Implementing Senate Bill 1149*, Docket Nos. UM 954 & UM 958, Order No. 00-308 at 4 (June 9, 2000) (denying request for reconsideration)).
[3] Order No. 26-153 at 29 (May 7. 2026).

b. PacifiCorp

PacifiCorp disagrees with NIPPC and AWEC's request to extend the capacity backstop charge, maintaining that it should instead be eliminated altogether. PacifiCorp states that such an extension would expand the use of the already-concerning capacity backstop charge, which further benefits ESSs at the risk of harming COS customers. It adds that PacifiCorp is required to eliminate coal-fired resources from its allocation of electricity by January 1, 2030, and that losing coal in 2030 will only compound the company's difficulty in providing RA for retail customers, making it all the more difficult to also provide capacity to non-retail, LTDA customers after 2030 through an extended capacity backstop charge.

c. PGE

PGE also disagrees that the capacity backstop charge should be extended, stating that NIPPC and AWEC have not demonstrated good cause and have impermissibly introduced new evidence outside of the record in a contested case. PGE states that the record reads that ESSs need help complying with RA; however, based on the admission in the application, despite that need, the DA customers will not use the capacity backstop charge in the next two years because a waiver to RA compliance has been granted.

4. Resolution

We deny PacifiCorp's request for reconsideration. We agree with Calpine that PacifiCorp's assertions about its ability to obtain capacity are not addressed by the underlying record in specificity, no new evidence was brought forth to support reconsideration, and they, therefore, do not constitute good cause for reconsideration. However, PacifiCorp has made a filing to establish the capacity backstop charge, as we directed, in docket UE 474.[4] Issues about the difficulty of providing the capacity backstop product are more appropriately raised in the utility-specific dockets addressing each utility's capacity product proposal, rather than on reconsideration of this order. In considering that filing and establishment of the new capacity backstop charge, as well as the level at which it should be set, we will consider evidence submitted by PacifiCorp about any difficulties it has experienced or will experience in obtaining capacity.

We do not credit PacifiCorp's allegations of cost-shifting, finding that there is no record evidence that cost-shifting is inherent to providing a backstop capacity charge. The record in this case points to the opposite cost-shifting issue. PGE testified that ESSs were

[4] *In the Matter of PacifiCorp, dba Pacific Power, Advice No. 26-014, Direct Access*, Docket No. UE 474, Initial Utility Filing (Aug 5, 2026).

chronically under-scheduling energy deliveries, requiring PGE to procure capacity to support balancing area level RA.[5] The ESS's testified that they face significant barriers to procurement or development of transmission and generation.[6] This evidence suggests that PGE and PacificCorp, as transmission owners and balancing area authorities, are already compensating for the ESSs and this is shifting costs. By pricing this otherwise-unaccounted-for cost as an additional charge, we expect to mitigate this imbalance until the state and regional RA constructs have addressed the underlying issue. As we observed in the order, "* * * we believe it reasonable to require the utilities to develop a short-term capacity backstop product for existing non-curtailable DA customers that are not currently paying transition charges."[7] We will, again, examine the specifics of the capacity backstop charges filed by PacifiCorp and PGE in their individual dockets to ensure that they are not creating unwarranted cost-shifting.

We also disagree with PacifiCorp that this charge is preempted by federal law. In the order, we intended that DA customers will pay the costs of the capacity backstop charge, as stated at several points.[8] Thus, we clarify the instance where we stated: "[w]e agree with PGE that ESSs, as beneficiary of the newly acquired capacity, should pay the full amount of the costs."[9] This instance was a misstatement, and should refer to DA customers rather than ESSs. As we stated in other parts of the order, the DA customers will pay the costs of the capacity backstop charge, not ESSs, meaning that the only customers subject to this charge are end-use, retail customers. As the Supreme Court has stated, "FERC's jurisdiction over the sale of power has been specifically confined to the wholesale market[,]" while states retain jurisdiction over retail sales.[10] Our directive to establish a capacity backstop charge for DA customers—who are retail customers—relates to a retail product, and it is thus within our jurisdiction.

Finally, we grant NIPPC and AWEC's request for reconsideration and extend the capacity backstop product until October 1, 2031. We are persuaded that it is reasonable to include the 2029-2031 capacity period, in light of the multi-year notice period required for returning DA customers to resume taking service from the utility. NIPPC and AWEC have demonstrated that our decision to support a multi-year return to COS did not fully

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[5] PGE/100, Goodspeed-Ferchland/19-22.
[6] *See* Order No. 26-153, n 28 (citing Calpine Solutions/200, Higgins/7-8). Calpine testified that it issued two Requests for Offers soliciting resource-adequacy-compliant capacity and received no response to either solicitation.
[7] *Id.* at 29.
[8] *Id.*at 29-30. The order "require[s] the utilities to develop a short-term capacity backstop product for existing non-curtailable DA customers[.]"It provides that "[b]y paying a capacity backstop charge, DA customers * * * will be exposed to the same costs for maintaining reliability that COS customers are in the current environment." It states that "this charge applies to existing DA customers[.]"
[9] *Id* at 29.
[10] New York v. FERC, 535 US 1, 20, 23 (2002).

align with our relatively short window for the capacity backstop charge, thus there is good cause to reconsider our decision. It is reasonable that DA customers' decision making requires clarity about the availability of the capacity backstop charge for the length of the notice period to resume taking service from the utility.

The extension of the capacity backstop product implicates a corresponding extension in our determination that PacifiCorp and PGE be the RA provider for customers still within the transition adjustment period. We had determined this approach to RA for customers paying the transition adjustment charges was reasonable only while the capacity backstop charge is available for non-curtailable customers who have completed the transition adjustment period. As this interim period is intended to solve the same issue that the period of the backstop capacity charge is intended to solve, the two periods should remain aligned.

However, as we noted in the resolution of this issue in the order, because this approach creates the risk of stranded assets for the utility at the end of the transition adjustment period, it is intended as a bridge only, as the backstop charge is. After the interim period, RA responsibility for DA customers in the transition adjustment period should shift to the ESS when the load takes service from the ESS, rather than at the end of the transition adjustment period.

Noting PGE's comments on NIPPC and AWEC's framing of the penalty waiver, addressed in Order No. 25-474 in docket UM 2404, we reiterate that the penalty waiver does not alleviate ESSs of their RA obligations. It merely recognizes that penalties, particularly for failing to procure both generation and firm transmission many months in advance, are not currently a constructive approach to addressing the regional generation and transmission scarcity. We still require ESSs to seek to cure their shortfalls and file forward showings. The capacity backstop charge is narrowly described, as applying to existing, non-curtailable DA customers no longer paying transition adjustment charges. To the degree that the capacity backstop charge is used when an ESS cannot cure the RA shortfall for these loads, it is likely that utility COS customers were already implicitly procuring new capacity or holding back existing capacity on a near-term basis to preserve the reliability of the balancing area.

We also emphasize that we intend this capacity backstop charge to be a bridge only. Ultimately, as we emphasized in the order, we intend to hold ESSs to our RA requirements, and we expect the parties to participate in docket AR 682 to create a RA construct that obligates load serving entities, whether ESSs or utilities, to carry their own load serving obligations to provide reliability.

B. Program Caps

1. Order No. 26-153

In our initial order, we maintained the current caps for the LTDA and New Load Direct Access (NLDA) programs for both utilities. PacifiCorp's current permanent opt-out program cap for LTDA customers is 175 aMW; its NLDA program is capped at 89 aMW. PGE caps its LTDA program at 300 aMW and its NLDA program at 119 aMW.

However, we stated that a petition for waiver of the caps may be brought before us at any time. For preferentially curtailable customers, we established that we would consider a waiver if certain criteria were met, including that the ESS has demonstrated compliance with binding state or regional RA requirements and the ESS participates as a resource in a real-time market available in Oregon. For non-curtailable customers, we explained we would consider a waiver of the cap if the customer can demonstrate: (1) the customer has backup generation to match their peak demand, (2) its ESS participates in a real-time market available in Oregon, (3) its ESS participates in a day-ahead market in Oregon, (4) its ESS participates in the Western Resource Adequacy Program (WRAP) or qualifying RA program and can access capacity sharing features, and (5) the customer plans to invest in system modernization improvements that advance state policy or provide near-term environment or economic improvements.[11]

We caveated this by stating that we understand and accept that it is likely not possible for ESSs to demonstrate their participation in a binding regional RA program at this time but believe that it will be possible in the future, allowing a transition to load using DA above the caps.

2. PacifiCorp's Application for Reconsideration

a. PacifiCorp

PacifiCorp argues that the Commission's waiver criteria are underinclusive and that a waiver should be granted only if the applicant demonstrates that granting the waiver is in the public interest. PacifiCorp states that this position is consistent with Staff testimony and Commission precedent. It also states that broadening the inquiry with a more general public interest standard is necessary because the criteria do not directly account for longer-term risks associated with potentially massive loads moving to LTDA programs.

[11] Order No. 26-153 at 22.

b. PGE

PGE agrees with PacifiCorp that the waiver request standard should be inclusive of the public interest standard. It states that PacifiCorp's request is consistent with both Commission precedent and law, and that the public interest standard would allow for the Commission to clarify it is reviewing a waiver request under all applicable legal requirements, in addition to the specific criteria ordered by the Commission through Order 26-153.

c. NIPPC

NIPPC agrees that the Commission has discretion as to whether to grant an individual cap waiver, but states that discretion has traditionally and uniformly been expressed as a requirement that the Commission grant a waiver from a rule or order only for "good cause." Because there is a good cause requirement, NIPPC argues that the Commission should not take up PacifiCorp's invitation to establish additional requirements for waivers from the DA program caps.

3. NewSun's Application for Reconsideration

a. NewSun

NewSun argues that the Commission committed an error in requiring ESSs to demonstrate participation in a RA program. NewSun notes that the Commission acknowledges that it is not likely possible for an ESS to participate in a regional RA program at this time and states that this constitutes a factual error in the order. NewSun states that since it is not possible for any ESS to meet the requirements for a waiver, the unachievable requirement should be removed from both the preferentially curtailable waiver and the non-curtailable waiver criteria. In the alternative, NewSun argues, the Commission should create an interim measure that would address the RA concerns but still be achievable in the near term. In this case, additional process would be necessary to identify the interim measure.

NewSun next argues that the Commission erred in requiring ESSs to demonstrate participation in a market. NewSun states that testimony before the Commission articulated that the ESS does not decide whether to participate in a market. That decision lies with the balancing authority. NewSun states that Staff attempted to clarify this requirement in testimony, but that such clarification is not reflected in the Commission's order.

b. PacifiCorp

PacifiCorp responds to NewSun's application for reconsideration and NIPPC and AWEC's request for clarification together. PacifiCorp disagrees that the market-participation requirement is "impossible to meet." It cites NIPPC's testimony that ESSs operating within PacifiCorp's balancing authority area are necessarily also participating in the Extended Day-Ahead Market (EDAM).[12] PacifiCorp further argues that where there is a concern that future conditions would render the market-participation requirement "impossible to meet," then the reasonable response is to relieve an ESS of this requirement, if the ESS can demonstrate that it cannot participate in the relevant market based on circumstances prevailing at the time the waiver is requested.

Additionally, PacifiCorp notes that NewSun states that it is impossible for an ESS to participate in a binding RA program. However, PacifiCorp argues that NIPPC and AWEC disagree, pointing out that "some ESSs* * *have previously demonstrated the capability to meet the Commission's [RA] rules, and it is likely some ESSs may be able submit fully compliant forward showings for the July 2027 to June 2029 compliance period."[13]

c. Staff

Staff responded to NIPPC, AWEC, and NewSun. Staff opposes the requests that the market participation requirement be struck from the list of waiver requirements, stating that participation in the energy imbalance or day-ahead market mitigates the cost and reliability impacts of ESS under-delivery. Staff states that examination of the record demonstrates that the criteria is not impossible to meet, and that in particular Staff Exhibit 200 addresses the scope of the ESS market participation, "that an ESS engage in these markets as a participating resource located within the same market footprint as their DA customer, not necessarily as a participating balancing authority in the market." Staff further states that, even were it impossible to meet the criteria, that does not in and of itself constitute an error warranting reconsideration.

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[12] PacifiCorp' Response to Application for Reconsideration at 3, n 12 (citing NIPPC/300, Tilghman/4, 11; NIPPC and AWEC Application at 6).
[13] NIPPC and AWEC Application for Reconsideration and/or Motion for Clarification at 11.

4. NIPPC and AWEC's Request for Clarification

a. NIPPC and AWEC

NIPPC and AWEC oppose the market participation requirement in the cap waiver criteria. They state that the Commission's order does not explain the rationale for the inclusion of the requirement for an ESS to participate in a real-time or day-ahead market in order to justify a cap waiver. They also state that the record demonstrates that these requirements are impossible to meet under a natural construction of the language in Order No. 26-153.

NIPPC and AWEC argue that the market participation requirement is impossible to meet because market participation is determined by a balancing authority, not a load-serving entity or resource that operates within a balancing authority area. NIPPC and AWEC state that this issue was explored in testimony and that Staff's witness Madison Bolton did incorporate into his testimony certain data responses that appear to have been intended to suggest a path for an ESS to serve as a market participant. However, they say, that response relied on inapposite sections of the CAISO tariff. Accordingly, they ask that the market participation requirement be struck.

In the alternative, they state that the Commission could eliminate the words "as a resource" and clarify that an "ESS participates ~~as a resource~~ in a real-time market available in Oregon" and "participates in a day-ahead market in Oregon" within the meaning of Order No. 26-153 whenever the balancing authority in whose balancing authority area the ESS operates is itself a participant in a real-time or day-ahead market. If, they state, the balancing authority's participation in a regional market requires additional downstream actions by the ESS, then the ESS will fulfill its obligations under the relevant FERC-jurisdictional tariff or tariffs.

b. Responses

PacifiCorp's and Staff's responses to NIPPC and AWEC are detailed *supra* in the section on NewSun's application for reconsideration.

5. NewSun's Request for Clarification

a. NewSun

NewSun also requests clarification on four grounds related to the caps. First, NewSun seeks clarification on whose obligation it is to seek a waiver. NewSun states that it is not clear whether it is the utility's, the ESS's, or the DA customer's obligation to seek a waiver. NewSun also states that it is not clear when the waiver petition should be brought and how this aligns with the DA customer's request to be served by an ESS and the notice given to the utility.

Second, NewSun seeks clarification on what the petition must include to satisfy the listed waiver elements, stating that the Commission should clarify what constitutes compliance with each of the waiver elements and how the applicant can demonstrate that it meets the criteria, with specific consideration to what is and is not within the control of the applicant.

Third, NewSun seeks clarification of whether a non-curtailable customer needs to demonstrate compliance with each of the waiver criteria or only one of the waiver criteria to be granted a waiver—in particular, they seek clarification as to whether the "and" between the fourth and fifth waiver criteria should be read as an "or".

Finally, NewSun seeks clarification as to whether interconnections that are able to be served without connecting to the utility's system need to seek a waiver. For example, areas of PacifiCorp's system are served by Bonneville Power Administration and thus it is possible for a load to be located in PacifiCorp's territory, but without being connected to PacifiCorp's system because it is being served by Bonneville. NewSun seeks clarification that in such a scenario, the load would not be subject to PacifiCorp's cap and thus would not need to file for a waiver if PacifiCorp had reached its cap.

b. PacifiCorp

PacifiCorp states that the Commission should clarify that anyone can bring a petition to waive the LTDA cap and confirm that a waiver petition may be filed "at any time." PacifiCorp also argues that the Commission's use of "and" between the waiver criteria should be taken at face value and not read as "or." Finally, PacifiCorp contends that there is no basis for the Commission to determine LTDA customers located within PacifiCorp's exclusive service area but that are interconnected to another utility's system can avoid the program caps as if they were not retail customers of PacifiCorp.

6. Resolution

As an initial matter, we reject NewSun's requests for clarification with one exception. Our order speaks for itself on the matters raised by NewSun and it should be taken at face value. In particular, the "and" between the fourth and fifth waiver criteria indicates that a waiver must include all of criteria—it cannot and should not be read as "or." We grant clarification, to the extent necessary, that any entity may file a waiver petition on behalf of a customer. As to NewSun's concerns about how an entity may demonstrate compliance with the waiver requirements, we do not feel it is appropriate to be prescriptive at this point about how that showing may be made. The specifics will depend on how the entity intends to meet each waiver criteria and will be addressed in evaluating waiver requests.

Next, we grant NIPPC and AWEC's requested clarification that there is an implicit "good cause" requirement for a waiver of the caps, in addition to the specific criteria we laid out in our order. It is appropriate for us to retain ultimate discretion over whether a waiver is granted, and the Commission consistently applies the "good cause" standard in evaluating waiver requests both in and outside of the DA program.[14] We reject PacifiCorp's request for reconsideration that seeks to add a "public interest" standard to the inquiry as we find that PacifiCorp has not pointed to new evidence or precedent or to an essential error of fact or law or established good cause for adding the "public interest" as a separate waiver criteria. Therefore, PacifiCorp has not met our criteria for reconsideration.

We reject NewSun's application for rehearing of the requirement that ESSs participate in an RA program. We stated, as NewSun acknowledges, that "[w]e understand and accept that it is likely not possible for ESSs to demonstrate their participation in a binding regional RA program at this time but believe that it will be possible in the future, allowing a transition to load using DA above the caps."[15] However, that does not constitute legal error—there is no requirement that waivers be available immediately to all ESSs under the order. As described above and in Order No. 26-153 at 29, "[o]ur goal is to preserve the momentum for constructive evolution towards regional solutions, such as a regional, binding RA program that both business models can participate in equitably." This is foundational to avoiding unwarranted cost-shifting. We further clarify that, because the capacity backstop charge is only available to existing DA customers, its existence or use does not demonstrate participation in a binding RA program for the purposes of waiving the cap. In fact, quite the opposite. If the backstop capacity charge is in use, ESSs are not able to demonstrate sufficient ability to meet load serving entities' needs and further growth in the program is questionable.

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[14] *See In the Matter of Lower Ridge Windfarm LLC & High Plateau Windfarm LLC Request for Waiver of the Five-Mile Radius Requirement,* Docket No. UM 1596, Order No. 12-188, Appendix A at 2 (May 23, 2012) (providing that "[a] waiver should be granted only for good cause"); *see also In the Matter of Rulemaking Related to a New Large Load Direct Access Program,* Docket No. AR 614, Order No. 18-341 at 7-8 (Sept. 14, 2018); *In the Matter of Kamana O'Kala, LLC, Request for Waivers of the 12-Month Solar Photovoltaic System Requirement per OAR 860-084-0210(1),* Docket No. UM 1538, Order No. 14-353, Appendix A at 2 (Oct. 14, 2014) (providing that "[t]he Commission has discretion to determine what constitutes 'good cause'"); *see also* OAR 860-001-0000(2); OAR 860-038-0001(4).

[15] Order No. 26-153 at 24.

We also deny NewSun's and NIPPC and AWEC's request for reconsideration of the market participation criteria because we find it adequately addressed by NIPPC and AWEC's motion for clarification, which we grant. Staff's description of market participation in the record reflects our concern, "* * * that an ESS engage in these markets as a participating *resource* located within the same market footprint as their DA customer * * *."[16] More specifically, we are concerned that an ESS's resource with which it will serve the DA customer is available to the BAA within the same market as the DA customer. To consider expanding the DA program, an ESS's resources, which may or may not be located within the same balancing area as the load they are serving, must be accessible to the market footprint the load is participating in. In light of this concern regarding the market's ability to effectively access the ESS's resources, the Commission can address a request for a waiver based on the facts specific to the reliability implications of market participation of loads and resources at the time a waiver is sought.

To clarify this further, we amend the criteria for waivers to read:

> For preferentially curtailable customers, the cap may be waived if their ESS has demonstrated compliance with binding state or regional resource adequacy requirements and the ESS*'s* ~~participates as a~~ *resource is available to the BAA in the same real-time market as the DA customer* ~~in a real-time market available in Oregon~~. For non-curtailable customers, the cap can be waived if the customer can demonstrate that: (1) the customer has backup generation to match their peak demand, (2) its ESS*'s* ~~participates~~ *resource is available to the BAA in the same real-time market as the DA customer* ~~in a real-time market available in Oregon~~, (3) its ESS*'s* ~~participates~~ *resource is available to the BAA in the same day-ahead market as the DA customer* ~~in a day-ahead market in Oregon~~, (4) its ESS participates in the Western Resource Adequacy Program (WRAP) or qualifying RA program and can access capacity sharing features, and (5) the customer plans to invest in system modernization improvements that advance state policy or provide near-term environment or economic improvements.

We find that this will preserve the purpose behind the waiver criteria which is a proactive risk reduction strategy that helps prevent reliability challenges by ensuring the load-serving entity has access to sufficient capacity, while making it reasonable for an ESS to fulfill.

[16] Staff/200, Bolton/22 (emphasis in original).

III. ORDER

IT IS ORDERED that:

1. PacifiCorp, dba Pacific Power's application for reconsideration is denied.

2. NewSun Energy LLC's application for rehearing and reconsideration is denied. NewSun's motion for clarification is granted in part and denied in part.

3. The Northwest & Intermountain Power Producer Coalition and the Alliance of Western Energy Consumer's application for reconsideration is granted in part and denied in part.

4. The Northwest & Intermountain Power Producer Coalition and the Alliance of Western Energy Consumer's motion for clarification is granted.

Made, entered, and effective Aug 24 2026.

Letha Tawney
Chair

Les Perkins
Commissioner

Karin Power
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.