ORDER NO. 26-403

ENTERED Oct 28 2026

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2469

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY and PACIFICORP, dba PACIFIC POWER, Joint Request for Waiver of OAR 860-095-0040(10)-(11) for the Joint Utilities in the Next State Program Compliance Period.	ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on October 27, 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 appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. RA1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 27, 2026

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: October 21, 2026

TO: Public Utility Commission

FROM: Jean Falconer

THROUGH: Caroline Moore, Scott Gibbens, and Curtis Dlouhy **SIGNED**

SUBJECT: PORTLAND GENERAL ELECTRIC AND PACIFIC POWER:
(Docket No. UM 2469)
Request for a Waiver of OAR 860-095-0040(10)-(11).

STAFF RECOMMENDATION:

Decline to grant Portland General Electric's (PGE) and Pacific Power's (PacifiCorp) (the Joint Utilities) waiver of OAR 860-095-0040(10)-(11).

DISCUSSION:

Issue

Whether the Commission should approve the Joint Utilities' request to waive the penalties associated with the Commission's state resource adequacy program for the 2027-2029 compliance process.

Applicable Rule

ORS 757.646 requires the Commission to develop "policies to eliminate barriers to the development of a competitive retail market between electricity service suppliers and electric companies." These policies must be "designed to mitigate the vertical and horizontal market power of incumbent electric companies and prohibit preferential treatment, or the appearance of such treatment, by the incumbent electric companies toward generation or market affiliates."

OAR 860-095-0010(14) defines a Qualified Regional Program as a Commission-approved regional reliability planning and compliance program that addresses Resource Adequacy through processes and conditions established in a FERC-approved tariff.

OAR 860-095-0010(16) defines Regional Participant as a Load Serving Entity that is a participant in or is officially committed to becoming a participant in a Qualified Regional Program at least 30 days prior to the Binding Forward Showing filing date of the State Program.

OAR 860-095-0010(18) defines State Participant as a Load Serving Entity that is not a Regional Participant.

Under OAR 860-095-0040, State Participants must comply with the Commission-administered state resource adequacy program (State Program). OAR 860-095-0040(2) requires State Participants to make a biennial compliance filing, referred to as a forward showing, in odd numbered years to demonstrate that the entity is meeting its planning obligations.

OAR 860-095-0040(10) states that a State Participant whose forward showing fails to meet the compliance requirements is given 60 days to remedy their forward showing.

OAR 860-095-0040(11) states that any forward showing that remains out of compliance after 60 days shall be subject to a fine deemed appropriate by the Commission.

Under OAR 860-095-000(2), the Commission may waive state resource adequacy rules for good cause shown.

Analysis

Background
In September 2025, the Northwest & Intermountain Power Producers Coalition (NIPPC) submitted a motion in Docket No. UM 2404 asking the Commission to adopt a penalty framework for the State Program and implement an alternative compliance pathway for ESSs.[1] NIPPC emphasized the difficulty ESSs are having meeting State Program requirements and said uncertainty about their ability to comply with requirements or reasonably limit non-compliance penalties could irreparably harm the direct access market. When NIPPC submitted its motion, PacifiCorp and PGE were not State Participants because they were committed to being binding participants in the Western Resource Adequacy Program (WRAP).

[1] NIPPC Motion in UM 2404, pages 1-3.

In October 2025, PacifiCorp and PGE both withdrew from WRAP, obligating them to demonstrate compliance with State Program requirements unless an alternate Qualified Regional Program becomes available. Both investor-owned utilities (IOUs) are currently engaged in developing an alternate program with other balancing authorities associated with the Extended Day-Ahead Market (EDAM).[2] While no program has yet been created, Staff notes that progress has been made. Notably, PacifiCorp and PGE have been active participants in collaboratively creating this EDAM-based resource adequacy program and cite the pressure imposed by Oregon's resource adequacy rules as a driving force in the conversation.[3] In addition to other non-jurisdictional parties, this has been done in conjunction with other Oregon stakeholders including NIPPC.

In Order No. 25-474, entered November 25, 2025, the Commission adopted Staff's recommendation to grant a waiver of OAR 860-095-0040(10)-(11) for Electric Service Suppliers (ESSs) making filings in the State Program on April 1, 2027.[4] OAR 860-095-0040(10)-(11) require State Participants to remedy any identified deficiencies within 60 days or be subject to penalties as determined by the Commission. Importantly, the Commission *only* waived penalties for ESSs, noting that IOUs face different and less uncertain planning horizons than ESSs.[5]

In addition to waiving penalties for ESSs for the next compliance filing, the Commission adopted Staff's recommendation to open a rulemaking to consider amendments to the Division 95 Resource Adequacy rules. Docket No. AR 682 is the first phase of this investigation, a narrowly-scoped rulemaking focused on two issues highlighted by Staff as urgent and targeted: 1) State Program penalties, and 2) whether entities that chose to leave the WRAP are required to submit forward showings to the State Program on April 1, 2027.[6] After engaging with ESSs and IOUs through meetings, workshops, and written comments, Staff has recommended minor changes to two Resource Adequacy rules: 1) OAR 860-095-0010(16), which defines a Regional Participant, and 2) OAR 860-095-0040(9)(e), which limits the use of transmission exceptions. Staff has also proposed a process to aid the Commission in determining non-compliance penalties under the existing language in OAR 860-095-0040(11). AR 682 is also being considered at the October 27, 2026 public meeting.[7]

While discussions in AR 682 were underway, the Commission issued its final order in Docket No. UM 2024, the Commission's docket addressing Direct Access programs.

---

2 Regional Resource Adequacy Program | ROWE Western Energy.
3 EDAM Resource Adequacy Workshop #1: Program Overview, Slide 6 (April 28, 2026).
4 Commission Order No. 25-474.
5 Order No. 25-474, Appendix A, Page 16.
6 Order No. 25-474, Appendix A, Page 19.
7 AR 682 Staff Report, page 7.

Among the many issues that were resolved, the Commission ordered that PacifiCorp and PGE create an interim capacity backstop product that a direct access customer can buy.[8] The Commission later extended the duration of this interim product to October 1, 2031, to align with the 2029-2031 State Program compliance process, the first for which ESSs will not have penalties waived.[9] The Commission also ordered that the utilities serve as resource adequacy providers during the transition adjustment period during the interim period in which the capacity backstop charge is also being charged.[10]

On September 8, 2026, the Joint Utilities submitted a motion in Docket No. UM 2469 requesting a waiver of OAR 860-095-0040(10)-(11). In this motion, they provide four arguments they believe constitute good cause for a waiver:

1. Progress has been made towards an EDAM-based resource adequacy program.
2. IOUs have increased resource adequacy obligations as a result of the Commission's order in UM 2024.
3. Changes to the Division 95 Resource Adequacy rules under discussion in AR 682 has created compliance uncertainty.
4. Waiving penalties for the Joint Utilities creates fairness between IOUs and ESSs.

Analysis
Staff notes that many of the concerns raised by the Joint Utilities are similar to those raised and addressed in AR 682. Staff would have preferred for the Joint Utilities to engage in the AR 682 docket on the design of penalties rather than to separately seek a waiver of penalties. Staff does not believe there is good cause to grant a waiver at this time. Staff summarizes and responds to the arguments submitted by the Joint Utilities in their UM 2469 filing below.

Argument 1: Progress Towards an EDAM-Based Resource Adequacy Program
The Joint Utilities note that "[s]ubstantial work has been and will continue to be put into developing an [EDAM-based] RA program" following their departure from WRAP.[11] They cite 11 workshops that have been conducted since April 2026, and another two scheduled to occur soon after the motion's filing date. Although nothing has been fully formed or approved, the Joint Utilities believe the Commission should consider the progress made towards developing an EDAM-based program as good cause to grant a waiver given the Commission's stated preference for regional solutions over localized approaches for resource adequacy.

---

8 Order No. 26-153, page 29.
9 Order No. 26-306, page 7.
10 Order No. 26-153, page 31.
11 Joint Utilities Motion in UM 2469, page 5.

Staff shares the Joint Utilities' urgency to work with other EDAM stakeholders to create another regional, voluntary resource adequacy offering. Staff sat in on many of the workshops held by the EDAM-RA Work Group and met with the Joint Utilities and other members of the Work Group to discuss the program on multiple occasions, and it is heartened by the progress that has been made. However, Staff emphasizes that no program has been finalized or approved, as noted by the Joint Utilities in their filing and worries that speculatively waiving penalties at such an early stage of development may be detrimental to the final product of the program and its long-term success. Further, Staff notes that it has repeatedly heard in workshops and individual stakeholder meetings that the Oregon resource adequacy requirements have been a key motivator for stakeholders—in particular PGE, PacifiCorp, and Calpine—to move the EDAM-RA process along. While substantial progress has been made to date on our shared goal of a functional EDAM-RA program, Staff believes that the momentum is best maintained by declining to waive penalties at this time.

Argument 2: Increasing Resource Adequacy Obligations as a Result of the Commission's Decision in UM 2024

The Joint Utilities state that Commission Order No. 26-153 is likely to increase their planning obligations due to the creation of a capacity backstop charge and the determination that utilities should be the resource adequacy providers for direct access customer load during the transition adjustment period during the interim period in which the capacity backstop charge is in place. They argue that these things will cause a utility's resource adequacy load to go up and an ESS's resource adequacy load to go down.[12]

Staff recognizes that while it is still being finalized as part of approved tariffs in UE 474 and UE 475, the capacity backstop charge may increase planning obligations for the Joint Utilities. Staff also acknowledges that the capacity backstop charge offerings from PacifiCorp and PGE are currently scheduled to be implemented by the end of 2026, which would make them available to ESSs prior to the next State Program compliance period that begins in April 2027. That said, Staff is skeptical about whether this is expected to create a meaningful new compliance challenge for the Joint Utilities.

As mentioned, the Commission waived penalties for ESSs for the 2027-2029 State Program compliance period. It is Staff's expectation that this has greatly reduced the demand for any capacity backstop products procured for the purposes of complying with the State Program during that time period. Discussions with ESS stakeholders and requests for reconsideration in UM 2024 seem to confirm that the value of the capacity

[12] UM 2469 Filing, Page 7.

backstop charge comes through its availability in the 2029-2031 compliance period.[13] With that in mind, Staff is not persuaded that the utilities will face significant new demand for capacity products during the 2027-2029 compliance period.

Furthermore, Staff disagrees that utilities serving as resource adequacy providers for direct access customers during the transition adjustment period will increase their planning obligations. It is more accurate to say that it will delay decreases in their resource adequacy obligations resulting from customers transitioning to ESS service. Additionally, utilities will have already planned for these customers' load, and the capacity obtained to serve them will not suddenly disappear because they are switching to direct access. Staff is again unpersuaded that this piece of Order No. 26-153 will create meaningful new compliance challenges for the Joint Utilities.

Argument 3: Lack of Clarity on Changes to Commission Resource Adequacy Rules in AR 682

The Joint Utilities point to the lack of clarity on changes to the Division 95 Resource Adequacy rules being considered in AR 682 as a reason to support their waiver. Specifically, they point out that the public meeting to consider changes has been delayed to September 15, 2026,[14] and that the formal rulemaking will take another 90 days to conclude. They argue that "utilities will not have sufficient time to evaluate the changing obligations and determine procurement strategies to meet the changing requirements prior to the April 1, 20227, compliance filing…."[15]

The AR 682 public meeting was delayed by three months, first because of the Commission order expected in UM 2024 (which has numerous implications for AR 682), and second because a key stakeholder could not attend the rescheduled public meeting. Staff does not believe this creates significant uncertainty about the April 2027 compliance filing for either of the Joint Utilities. Staff reiterates that AR 682 is narrow in scope, and Staff is recommending minor changes to only two rules, one defining a Regional Participant and the other clarifying the use of repeated transmission exceptions. Changes to resource adequacy obligations were not discussed during the rulemaking nor are they part of Staff's recommendation. Staff has made clear to participants from the beginning of the rulemaking that changes to compliance timing, methodologies, and requirements are firmly out of scope, and that these issues can be considered in the second phase of the resource adequacy investigation, one purpose of which is to harmonize the State Program with any new regional resource adequacy

---

[13] UM 2024, NIPPC and AWEC Application for Reconsideration and/or Motion for Clarification, filed on July 6, 2026. Page 10.

[14] UM 2469 Initial Filing, Page 8. Staff notes that the public meeting to consider AR 682 has been further delayed to October 27, 2026.

[15] UM 2469 Initial Filing, Pages 7-8.

programs like the EDAM resource adequacy program the Joint Utilities are helping to develop. Staff believes the above, along with extensive work done previously to set up the first compliance filing in April 2025, provides the Joint Utilities with sufficient clarity about what their compliance filing obligations will be for the 2027-2029 compliance filing.

Argument 4: Fairness Between ESSs and Utilities
The Joint Utilities claim that the Commission did not adhere to the fairness standard when it chose to waive penalties for ESSs but not IOUs in Order No. 25-474. Given the Commission's stated goal of preserving momentum for constructive regional resource adequacy solutions in which both ESS and IOU business models can participate equitably, the Joint Utilities argue that "[b]ecause ESSs were granted a waiver… for the 2027 compliance filing in Order 25-474, fairness dictates that all parties should be granted a waiver for the same period."[16]

Staff's recommendation to waive penalties for ESSs and not IOUs for the 2027-2029 compliance process, adopted by the Commission in Order No. 25-474, is motivated by Staff's view that ESSs and utilities faced sufficiently different compliance challenges and uncertainty to warrant different treatment by the Commission for that particular compliance process.[17] As laid out in the UM 2404 Staff report, the two-year notification direct access customers must provide to return to utility service meant that ESSs had to decide in Fall 2025 whether to renew existing customers' contracts. For that reason, ESSs essentially had to secure resource adequacy-complaint resources at that time or receive assurance that non-compliance penalties could be reasonably limited. In addition, compliance uncertainty was exacerbated for ESSs in particular by ongoing discussions about Oregon's direct access program in UM 2024. Utilities, on the other hand, had significantly more time than ESSs to plan for compliance. Staff continues to believe that differential treatment of ESSs and IOUs for the 2027-2029 compliance process is warranted for the reasons described above.

Additionally, Staff notes that the standard for treatment between IOUs and ESSs is not "equity and fairness" as the Joint Utilities argue.[18] The applicable statute is ORS 757.646, which requires the Commission to develop policies to eliminate barriers to competition, particularly to "mitigate the vertical and horizontal market power of incumbent electric companies." The statute does not require equal treatment between IOUs and ESSs.

---

16 UM 2469 Filing, Pages 9-10.
17 UM 2404 Staff Report, Page 16.
18 Joint Utilities Motion in UM 2469, page 10.

Supplemental Comments from the Joint Utilities
The Joint Utilities submitted additional comments in this docket after meeting with Staff and learning of its intent to recommend that the Commission deny the waiver request. These supplemental comments include two additional arguments:

1. State Program penalties would not effectively accelerate the development of the EDAM-based resource adequacy program;[19] and
2. State Program penalties may have unintended financial consequences for customers if differences between the State Program and EDAM-based program necessitate planning and procuring for two distinct sets of requirements.[20]

Regarding the Joint Utilities' first supplemental argument, Staff again points to materials produced by the EDAM Work Group, for example a workshop slide that notes that "Oregon's RA rules… require binding forward capacity showings and allow compliance through a qualified regional program, *creating urgency for an EDAM-aligned RA solution*" (emphasis added).[21] Staff has heard similar sentiments expressed in workshop discussions and stakeholder meetings. In Staff's view, State Program penalties have been an effective external incentive helping to move forward conversations about the new program and has concerns that removing this external incentive may hinder progress.

Regarding the Joint Utilities' second supplemental argument, Staff understands concerns about planning for two different sets of resource adequacy requirements and that there may be financial implications if the Joint Utilities must make significant acquisition moves to comply with the State Program. That said, Staff again emphasizes that while meaningful progress has been made to develop the new EDAM-based resource adequacy program, no program has been finalized or approved, and a fully operational program will almost certainly not be completed by April 2027. Staff continues to ask members of the EDAM Work Group for an expected timeline for program development because Staff is eager both to see how the EDAM-RA program would take shape and to begin the second phase of its Resource Adequacy investigation to, among other things, harmonize the State Program with the new EDAM-RA program. Staff has not heard of any firm timeline beyond the planned Spring 2027 deadline for presenting the ROWE board with a program proposal. Staff agrees with the utilities that planning for two overlapping compliance targets is not desirable if it can be avoided without consequence. However, until a viable alternate program actually exists, Staff worries that removing State Program penalties may remove incentives to comply with requirements that ensure resource adequacy.

---

19 UM 2469 Supplemental Comments, page 2.
20 *Id.*
21 EDAM Resource Adequacy Workshop #1: Program Overview, Slide 6 (April 28, 2026).

Other Considerations
Beyond the issues raised by the Joint Utilities, Staff feels there is one other item the Commission should consider as part of its decision to approve or deny the waiver. The current Division 95 rules and those proposed by Staff in AR 682 both include flexibility for the Commission to assess penalties as they see fit. Should circumstances render Staff's analysis out of date and/or cause lowered penalties to be in the public interest, both the current and proposed rules would allow the Commission to adjust noncompliance penalties accordingly.

Staff Recommendation
Staff recommends that the Commission decline to grant the Joint Utilities' request to waive OAR 860-095-0040(10)-(11). On the one hand, granting the waiver may give the Joint Utilities greater certainty in acquiring least-cost, least-risk resources by removing potentially duplicative and imperfectly aligned compliance targets. On the other hand, while Staff recognizes and applauds the Joint Utilities for making significant progress towards our shared goal of an EDAM-based regional resource adequacy solution, Staff believes the low bar set by granting this waiver undermines the State Program by pre-emptively waiving penalties for IOUs for speculative reasons. In weighing these tradeoffs, Staff reiterates that the planning decisions are different for IOUs than ESSs, which was discussed at length in UM 2404. In addition, Staff does not believe that Commission Order No. 26-153 will create a meaningful new compliance obligation for the Joint Utilities during the upcoming compliance period, nor does it believe the rule changes under consideration in AR 682 create sufficient uncertainty to justify a penalty waiver. Finally, Staff emphasizes that the current and proposed Division 95 rules leave the Commission with adequate flexibility should the utilities' circumstances change between now and their compliance filing due on April 1, 2027.

While there are trade-offs between granting or declining to grant the waiver at this time, Staff recommends that the Commission decline to grant the waiver based on its assessment of the current circumstances.

Conclusion

The Commission should decline to grant the Joint Utilities' request to waive the penalties associated with the Commission's state resource adequacy program for the 2027-2029 compliance process.

PROPOSED COMMISSION MOTION:

Decline to grant the Joint Utilities' request to waive OAR 860-095-0040(10)-(11).