**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UE 463**

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| In the Matter of<br><br>PACIFICORP, dba PACIFIC POWER,<br><br>Advice No. 25-015, Schedule 401-Service to New Large Energy Use Facilities. | NEWSUN ENERGY'S COMMENTS |

## I. INTRODUCTION

NewSun Energy ("NewSun") respectfully submits these comments regarding the Stipulation filed in this docket. NewSun opposes the Stipulation and Schedule 401 to the extent that they expressly or implicitly permit PacifiCorp to refuse, withhold, or unreasonably delay the load studies and other engineering work necessary for a new Large Energy Use Facility ("LEUF") to obtain service. The Commission should make clear that Schedule 401 cannot be administered in a manner that would allow PacifiCorp to wield its unilateral control over the study process as a means to deny or unreasonably delay service.

NewSun filed a petition to intervene on September 25, 2026. PacifiCorp objected on September 30, 2026, and NewSun intends to respond separately. While its petition remains pending, NewSun submits these comments as a member of the public because the Stipulation raises issues that go directly to the availability of utility service, nondiscriminatory administration of Schedule 401, and the proper relationship between

PacifiCorp's exclusive service-territory rights and its obligation to serve customers within that territory.

## II. LEGAL STANDARD

When reviewing stipulations, the Commission evaluates whether the terms are reasonable and consistent with the public interest. The Commission's review must also account for the statutory duties governing utility service. ORS 757.020 requires every public utility to furnish adequate and safe service, equipment, and facilities. ORS 758.405 states that Oregon's territory-allocation laws are intended to promote efficient and economic utility service while providing adequate and reasonable service to all affected territories and customers. ORS 756.040(1) directs the Commission to use its jurisdiction and powers to protect customers and the public from unjust and unreasonable practices and to obtain adequate service at fair and reasonable rates. For LEUFs specifically, ORS 757.295 requires service contracts to identify the date or estimated date service will begin and confirms that the statutory framework does not restrict a qualifying customer's ability to use direct access.

Those duties are especially important where the utility controls the studies and information that are prerequisites to service. A tariff is not reasonable or in the public interest if it gives PacifiCorp discretion to prevent a customer from reaching the point at which service, a service date, or a competitive supply option can even be evaluated.

## III. COMMENTS

The Stipulation should not be approved without express safeguards against unreasonable delay, discrimination, and denial of service. NewSun's concerns include the procurement restrictions in paragraph 33, the broad queue discretion in paragraph 32,

and—most importantly—the absence of a clear customer right to receive timely load studies and other engineering work necessary to obtain service.

### A. Paragraph 33 of the Stipulation is Not in the Public Interest, Nor is it Reasonable, Because It Limits Competition.

First, paragraph 33 of the Stipulation is not in the public interest because it restricts competition among generation resources that might otherwise participate in utility procurement. Broad participation in a request for proposals ("RFP") allows a utility to evaluate a wider range of market options and increases the likelihood that customers receive the benefits of competitive procurement. Conversely, restrictions that unnecessarily narrow the bidder pool can reduce competitive pressure and impair the value of the RFP process. The Commission has recognized that disparate or preferential treatment of bidders can compromise the integrity and customer value of an RFP process. See Docket No. UE 427, Order No. 24-091 at 4-5 (Apr. 4, 2024).

The Stipulation provides that any resources that are actively participating in a formal system procurement request would be ineligible to support a LEUF.[1] The justification provided in testimony is "[a]llowing LEUFs to acquire resources that otherwise might have been acquired as a least-cost, least-risk resource for cost-of-service customers could result in indirect cost shifting."[2] But this justification fails to account for the possibility that the restriction itself could also cause cost shifting.

This provision limits competition by forcing projects to choose between the RFP and serving a LEUF. Recent Commission proceedings recognize a material risk of

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1 Stipulation at 16 (Sep. 16, 2026).
2 Stipulating Parties/100, Meredith-Stevens-Tran-Fisher/68.

developer attrition from utility procurement processes. PacifiCorp acknowledged that risk in its request for acknowledgment of the final shortlist in Docket No. UM 2383. Staff addressed developer attrition in its June 18, 2026 report in that docket. The Commission discussed the issue at the public meeting concerning the final shortlist. And Staff has addressed related resource-availability concerns in PacifiCorp's 2025 Integrated Resource Plan and Clean Energy Plan proceeding, Docket No. LC 85.

Against that backdrop, paragraph 33 could further reduce RFP participation by requiring a developer to forgo a potential LEUF transaction merely by participating in a formal system procurement. A would-be least-cost least-risk resource may choose not to bid into the RFP and instead work directly with a LEUF, resulting in customers experiencing increased costs based on higher-cost resources that choose to pursue the RFP. Trying to predict what costs will result from each process, which bidders will choose which pathway to procurement, and whether any unwarranted cost shifting will occur is uncertain. The public interest compels full competition and participation from the widest array of distinct bidders possible.

Second, the limitation is not reasonable because potential bidders are not a party to the Stipulation, or this docket.[3] It is noteworthy that PacifiCorp is actively objecting to NewSun's participation in this docket—to silence the voice of potential RFP bidders. It is

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[3] Parties to the Stipulation are PacifiCorp d/b/a Pacific Power, Public Utility Commission of Oregon (Commission) Staff, Oregon Citizens' Utility Board (CUB), and Community Energy Project, Climate Solutions, Oregon Environmental Council, and Sierra Club (Environmental Intervenors). Stipulating Parties/100, Meredith-Stevens-Tran-Fisher/1.

not reasonable for parties to make a decision that binds entities who are not present in the instant proceeding.

This provision is unfair to those who choose to bid into the RFP. If a bidder chose the RFP over pursuing a path with a LEUF, but then the bidder is not selected to the shortlist, then bidder would be forced back to square one to find a buyer for their project. In a time where there is a need for clean generation and the region is facing huge potential shortages, the utilities should be working to create more pathways for projects to get online, not less.

Paragraph 33 also leaves important implementation questions unresolved. It does not clearly define the scope of a "formal system procurement request," the point at which a resource becomes or ceases to be "actively participating," or the consequences if a resource withdraws from an RFP after beginning discussions with a LEUF. For example, it is unclear whether participation in Portland General Electric's RFP would render a resource ineligible to support a LEUF in PacifiCorp's territory. These ambiguities matter because developers and LEUF customers need to know, before committing substantial time and capital, which commercial pathways remain available. The Commission should not approve a restriction on market participation without clear, objective, and administrable standards.

### B. Paragraph 32 Is Not Reasonable Without Objective Standards Governing PacifiCorp's Control of the Load Queue.

In addition to affecting the means by which generation resources may be procured, the Stipulation leaves PacifiCorp with unfettered control over which loads advance toward interconnection and when. Control over the queue and study process can

become control over whether a customer receives service at all. In the energy world, the power to interconnect is the power to destroy.

While the Stipulation provides that a load queue will be created and "LEUF customers will be interconnected in the order in which they execute a LEUF Agreement," PacifiCorp would have the power to make "any changes" to the queue so long as they include a "justification" in the report submitted to the Commission.[4] There are no standards indicated for when PacifiCorp may unilaterally make changes to the queue and on what grounds. The Commission is also able to make changes to the queue; however, the Commission's discretion is limited to "good cause" and only "if the change does not result in unfair or unduly discriminatory treatment of any other LEUF customers."[5]

It is not reasonable or in the public interest to provide PacifiCorp unilateral authority to reorder or delay customers without objective standards, enforceable deadlines, and protection against undue discrimination. At a minimum, any approved tariff should require PacifiCorp to process study requests in good faith, according to transparent criteria, and within reasonable and defined timeframes, subject to Commission review.

### C. PacifiCorp Must Not Be Permitted to Use the Study Process to Delay or Deny Service

The Stipulation does not adequately address a threshold problem: a customer cannot meaningfully obtain service—or evaluate direct access or another lawful supply option—unless PacifiCorp performs the load studies and related engineering work needed

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4 Stipulation at 16.
5 Stipulation at 16.

to determine how the load can be interconnected. If PacifiCorp may decline to initiate a study, leave a study pending indefinitely, repeatedly change study requirements, or condition completion on requirements unrelated to legitimate engineering needs, then PacifiCorp can effectively deny service without ever issuing a formal denial.

That result would conflict with PacifiCorp's obligation to furnish adequate service under ORS 757.020 and with the purpose of Oregon's territory-allocation statutes to provide adequate and reasonable service to all affected customers. It would also undermine ORS 757.295, which contemplates a service agreement containing a date or estimated date for commencement of service and expressly preserves the ability of qualifying LEUF customers to use direct access. A statutory right to pursue service or direct access is of little practical value if the incumbent utility can prevent the customer from obtaining the studies needed to exercise that right.

The Commission therefore should condition any approval of the Stipulation and Schedule 401 on an express requirement that PacifiCorp timely accept and process bona fide load-study requests. PacifiCorp must apply transparent, objective, and nondiscriminatory study requirements. It must also identify any deficiencies in an application promptly and with reasonable specificity. Finally, PacifiCorp shall complete studies within reasonable timeframes subject to Commission enforcement. PacifiCorp should not be permitted to use the study process as a gatekeeping mechanism to select which LEUF customers may proceed toward service.

The need for that protection is not hypothetical. In Docket UM 2410, Amazon Data Services, Inc. alleged that PacifiCorp failed to provide service to four new data-center campuses located within PacifiCorp's exclusive service territory and sought, as

alternative relief, removal of PacifiCorp's exclusive right to serve those campuses. In denying PacifiCorp's motion to dismiss that claim, the Administrative Law Judge concluded that the Commission could not be deemed powerless to act where a utility is unwilling or unable to serve a customer within its allocated territory. The ruling further explained that the purpose of the allocation laws is to ensure adequate and reasonable service and described the regulatory compact as granting a utility exclusivity in exchange for an obligation to provide safe, reliable, and nondiscriminatory service. See Amazon Data Services, Inc. v. PacifiCorp, OPUC Docket UM 2410, Ruling at 3-5 (Feb. 19, 2026).

### D. Unreasonable Delay or Refusal to Serve Should Defeat PacifiCorp's Claim to Exclusivity

PacifiCorp should not be allowed to invoke exclusive service-territory rights to prevent another utility from serving a customer while simultaneously refusing or unreasonably delaying the studies and facilities needed to serve that customer itself. Exclusivity and the obligation to serve are reciprocal features of the regulatory compact. They should not operate as a one-way barrier that leaves a customer captive but unserved.

The Commission should therefore expressly state that unreasonable refusal, withholding, or delay of required load studies or other necessary steps toward service constitutes a failure to provide adequate and reasonable service. Where that failure prevents a bona fide customer from obtaining service within a reasonable period, PacifiCorp should be treated as having waived or forfeited its right to rely on territorial exclusivity as to that customer, and the customer should be permitted to seek service from another willing utility, subject to Commission approval and any conditions needed to protect system reliability and other customers.

This is consistent with the ALJ's reasoning in UM 2410. Although Chapter 758 does not itself provide an express mechanism for unilateral reallocation over the incumbent utility's objection, the Commission's broader authority under ORS 756.040 and ORS 756.568 support action necessary to ensure adequate service when the utility is unwilling or unable to serve. The Commission should address that principle now, before approving a tariff structure that could otherwise allow study delay to become a de facto denial of service.

At the same time, Schedule 401 should require nondiscriminatory treatment of similarly situated LEUF customers. PacifiCorp should apply materially consistent study standards, queue rules, and service terms to comparable loads, and any departure should be supported by a documented, objective system or customer-specific basis that is reviewable by the Commission.

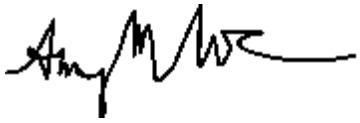
## IV. CONCLUSION

NewSun requests that the Commission impose conditions that: (1) establish a clear right of LEUF applicants to timely and nondiscriminatory load studies; (2) impose objective standards and reasonable deadlines governing PacifiCorp's administration of the study and queue processes; (3) prohibit PacifiCorp from using those processes to delay or deny service or to impede lawful direct-access options; and (4) recognize that a utility that unreasonably refuses or delays the steps necessary to serve a customer may not use territorial exclusivity to prevent that customer from obtaining service from another willing provider, subject to Commission approval. These safeguards are necessary to ensure that Schedule 401 implements Oregon law without converting PacifiCorp's exclusive service territory into an exclusive right to delay or deny service.

Dated this 1st day of October, 2026.

Respectfully submitted,

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