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VIA E-MAIL TO

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

Re: Docket No. UM 2410 – *Amazon Data Services, Inc. v. PacifiCorp d/b/a Pacific Power*

Attention Filing Center:

Attached for filing in the above-captioned docket, please find PacificCorp d/b/a Pacific Power's Answer and Counterclaims. The confidential version of this filing has been provided to parties under General Protective Order No. 23-132.

Please contact this office with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "MH", written over a horizontal line.

Michael Highfill
Paralegal
McDowell Rackner Gibson PC

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 2410

AMAZON DATA SERVICES, INC.,

Complainant,

v.

PACIFICORP d/b/a PACIFIC POWER,

Respondent.

**PACIFICORP'S ANSWER AND
COUNTERCLAIMS**

I. INTRODUCTION

This proceeding involves four Amazon Data Services, Inc. (ADS) data centers located in PacifiCorp d/b/a Pacific Power's (PacifiCorp or Company) exclusive service territory, referred to as Specialized, Litespeed, Pivot, and Gray. These data centers are projected to add a collective [Begin Confidential] [REDACTED] [End Confidential] megawatts (MW) of load to PacifiCorp's system and cost billions of dollars to construct the electric infrastructure necessary to serve the load through time. For the last five years, PacifiCorp has negotiated with ADS over PacifiCorp's provision of electric service to these projects. PacifiCorp's objective during these negotiations has been to accommodate ADS's desire to add very significant amounts of new load on aggressive timelines while protecting PacifiCorp's other customers from cost shifting or other potential detrimental effects and not imperiling its compliance with Oregon's clean energy policies.

At all times, PacifiCorp has negotiated in good faith with ADS and diligently worked to discharge its obligations under the parties' agreements. As part of PacifiCorp and ADS's negotiations, the parties entered multiple non-service agreements for the preparation work needed for PacifiCorp to provide electric service, including completing studies and ordering

1 long-lead-time equipment. PacifiCorp and ADS also entered agreements for electric service—
2 called Master Electric Service and Facilities Improvements Agreements (MESAs)—for two of
3 the projects, Specialized and Litespeed, in 2022 and 2023, respectively.

4 Under the terms of the Specialized MESA, PacifiCorp paid nearly \$100 million for
5 transmission system upgrades and acquired transmission service from the Bonneville Power
6 Administration (BPA), Umatilla Electric Cooperative (UEC), and PacifiCorp Transmission.
7 PacifiCorp began serving Specialized on [Begin Confidential] [REDACTED] [End
8 Confidential], and since that time has provided all power required by ADS’s current operations
9 at Specialized. Contrary to ADS’s allegations in the Complaint, ADS has consistently requested
10 PacifiCorp to deliver far less power than the amounts it is entitled to under the Specialized
11 MESA. But if ADS were to increase its load to the full amount to which ADS is currently
12 contractually entitled, PacifiCorp would be prepared to serve the full amount.

13 As for Litespeed, PacifiCorp has acquired the necessary easements for the significant
14 upgrades required for this facility after extended negotiations with the property owner, and
15 construction of system upgrades for Litespeed is underway. PacifiCorp has been supplying
16 bridging power to Litespeed since [Begin Confidential] [REDACTED] [End
17 Confidential], and the current projected in-service date for Litespeed is in [Begin Confidential]
18 [REDACTED] [End Confidential]. Although the current projected in-service date is later than
19 the target completion date set forth in the Litespeed MESA, which the parties signed in 2023, the
20 delay has been caused by factors outside PacifiCorp’s control. ADS has contributed to the delay
21 by failing to timely complete required steps in the project construction and energization
22 schedule, and the current projected in-service date is driven by the construction schedule for

1 necessary upgrades that Portland General Electric Company (PGE) is completing at one of its
2 substations.

3 While PacifiCorp has complied with its obligations under the existing MESAs, ADS has
4 not performed its duty to pay all “Actual Costs” required to provide service to Litespeed and
5 Specialized. Instead, ADS has refused to pay **[Begin Confidential]** [REDACTED] **[End**
6 **Confidential]** in “gross-up” charges, which reflect the amounts of income tax PacifiCorp incurs
7 on ADS’s construction contributions.

8 As negotiations regarding PacifiCorp’s provision of electric service to additional data
9 center campuses continued after execution of the Litespeed and Specialized MESAs, it became
10 apparent that it would be impossible to achieve the aggressive timelines and amount of new load
11 ADS was requesting if electric service to each project were negotiated separately and addressed
12 under the agreements and processes PacifiCorp had previously used for large customers. Thus, to
13 achieve ADS’s desired timing and load for the four projects, PacifiCorp recommended that the
14 parties negotiate a bilateral agreement, subject to review and approval by the Commission, that
15 would provide for electric service to all four data centers and supersede the MESAs for
16 Specialized and Litespeed. ADS had also expressed interest in acquiring its own generation
17 resources to serve the projects and achieve its renewable objectives, and a new service contract
18 provided an opportunity to pursue this goal of ADS’s as well. Thus, by 2024, the parties were in
19 negotiations for a multi-site service contract—a strategy that ADS willingly engaged in.

20 While the parties’ negotiations were ongoing in summer 2025, the Oregon Legislature
21 passed House Bill (HB) 3546, which requires electric utilities and large data centers to enter
22 comprehensive contracts for electric service and establishes minimum requirements applicable to
23 such contracts. HB 3546 requires that such contracts assign costs to data centers in a way that

1 avoids any cost shifting to other retail electricity customers. PacifiCorp had already taken the
2 position in the negotiations that any service contract between the parties could not shift costs to
3 PacifiCorp's other customers, but the passage of HB 3546 confirmed that PacifiCorp's position
4 was consistent with Oregon legislative policy and removed any discretion the parties had to
5 pursue an alternative approach.

6 Also during the summer of 2025, ADS and PacifiCorp recognized that the multi-site
7 service contract negotiations had become protracted, and both parties desired to either promptly
8 reach agreement on terms or to terminate the negotiations and move forward with service to
9 Litespeed and Specialized only under the existing MESAs. PacifiCorp provided a "last, best, and
10 final" offer to ADS that was consistent with its obligations under HB 3546, but ADS did not
11 accept this offer. While PacifiCorp remains ready and willing to serve all four data center
12 campuses, it cannot agree to terms for electric service to ADS that contravene Oregon law or
13 policy or otherwise shift costs or risks to PacifiCorp's other customers.

14 Because PacifiCorp has complied with the terms of the parties' existing agreements and
15 with applicable law in its ongoing efforts to serve the ADS facilities, ADS's claims for relief are
16 meritless and should be denied. As addressed in PacifiCorp's Partial Motion to Dismiss, filed
17 concurrently with this Answer, ADS's Sixth Claim for Relief regarding removal of the facilities
18 from PacifiCorp's exclusive service territory also lacks any legal basis and must be dismissed.

19 PacifiCorp continues to seek an efficient resolution to the parties' disputes so that
20 PacifiCorp can serve ADS in a manner that complies with Oregon law and does not harm other
21 customers. To facilitate PacifiCorp and ADS reaching agreement in the future, PacifiCorp
22 requests the Commission issue an order in this proceeding that confirms HB 3546 applies to each
23 of the four ADS facilities and that ADS is responsible for all the costs of serving ADS that

1 PacifiCorp incurred after the effective date of the new law, including costs for ongoing and
2 planned system upgrades, transmission service, any new generation needed to serve these
3 facilities, and an appropriate contribution to shared system costs. PacifiCorp also requests that
4 the Commission find that ADS must pay all costs of PacifiCorp acquiring sufficient non-emitting
5 generation to serve ADS's load in a manner that does not impede PacifiCorp's compliance with
6 clean energy requirements and that ADS must pay all costs of PacifiCorp acquiring sufficient
7 small-scale renewable capacity to cover 10 percent of the additional electrical capacity
8 PacifiCorp acquires to serve ADS. Finally, PacifiCorp requests the Commission to confirm that
9 ADS's costs of service include the tax gross-up charges that ADS has refused to pay and order
10 ADS to promptly pay these charges.

11 PacifiCorp takes its obligation to serve seriously and strives to serve all customers
12 reliably and affordably, while fairly balancing the needs of different customer classes and
13 complying with all applicable laws. PacifiCorp looks forward to additional clarity and guidance
14 from the Commission regarding its provision of service to ADS.

15 **II. ANSWER**

16 PacifiCorp hereby answers the Complaint. PacifiCorp denies any allegations not
17 specifically admitted herein and reserves the right to supplement this Answer if ADS amends its
18 Complaint. The headings below reproduce the headings used in the Complaint. To the extent
19 these headings include allegations that are not alleged elsewhere in the Complaint and require a
20 response, PacifiCorp denies the allegations in these headings. With respect to the numbered
21 paragraphs of the Complaint, PacifiCorp answers as follows:

22 **Introduction**

23 1. PacifiCorp denies that it failed to comply with its obligation to provide electric
24 service within its exclusive service territory. PacifiCorp admits that ADS invested in new data

center facilities within PacifiCorp's service territory but has insufficient information or knowledge to admit or deny what ADS may have relied upon in choosing to do so. PacifiCorp admits that it entered into various contracts with ADS but denies that ADS committed to pay for electric service, as well as the infrastructure improvements necessary to connect its new facilities to PacifiCorp's network, in accordance with the existing Commission-approved tariff policies and rates.

2. PacifiCorp denies that ADS paid PacifiCorp [Begin Confidential] [REDACTED] [End Confidential]—according to PacifiCorp's records, ADS has paid PacifiCorp [Begin Confidential] [REDACTED] [End Confidential] under the Specialized and Lightspeed MESAs. PacifiCorp denies that it breached its statutory obligations and contractual duties by failing to supply ADS with the promised power. PacifiCorp denies that ADS exhausted all reasonable efforts for resolution with PacifiCorp. The remainder of Paragraph 2 contains requests for relief, which require no response.

Summary of Claims

3. PacifiCorp has insufficient information or knowledge to admit or deny the truth of the allegations in Paragraph 3, which relate to ADS's operations.

4. PacifiCorp has insufficient information or knowledge to admit or deny the truth of the allegations in Paragraph 4, which relate to ADS's actions and operations.

5. PacifiCorp has insufficient information or knowledge to admit or deny the truth of the allegations in Paragraph 5, which relate to ADS's intentions and reasoning.

6. PacifiCorp has insufficient information or knowledge to admit or deny the total amount of ADS's investment to develop the data center campuses. PacifiCorp denies that it has not met its contractual or statutory requirements for any of the data center campuses. PacifiCorp admits that Specialized has been consuming less power than is currently provided for under the

1 load ramp terms in the MESA, but PacifiCorp denies that it has made available significantly less
2 power than promised to Specialized. PacifiCorp admits that it had not delivered power to
3 Litespeed as of the date ADS filed its Complaint, but denies that it had an obligation to do so as
4 of that date. PacifiCorp has been providing bridging power to Litespeed since **[Begin**
5 **Confidential]** [REDACTED] **[End Confidential]**. PacifiCorp denies that it currently has an
6 obligation to provide anything other than bridging power to Litespeed. PacifiCorp denies that it
7 has refused to complete its own standard contracting process for Pivot and Gray. PacifiCorp
8 remains willing to serve these facilities and open to negotiating a contract for electric service for
9 Pivot and Gray.

10 7. PacifiCorp admits that it charged ADS a 32.6 percent “tax gross-up” on ADS’s
11 capital contributions, as it does for any customer with an unfinished project greater than
12 \$20 million, and that it continues to demand payment of these charges. PacifiCorp admits that it
13 changed its internal policy with respect to tax gross-up charges after PacifiCorp and ADS
14 executed the Specialized and Litespeed MESAs but denies that the change occurred “years”
15 after. PacifiCorp denies all other allegations in Paragraph 7.

16 8. PacifiCorp denies that it failed to perform its existing obligations related to
17 Specialized and Litespeed. PacifiCorp has insufficient information or knowledge to admit or
18 deny the truth of the remaining allegations in Paragraph 8, which relate to ADS’s operations.

19 9. PacifiCorp admits that it recommended that ADS negotiate a service contract that
20 would supersede the existing agreements for all four data center campuses, due to the scale of
21 ADS’s load requests, ADS’s requested timing, and ADS’s renewable goals. PacifiCorp admits
22 that ADS willingly engaged in negotiations for a replacement service contract but has
23 insufficient information or knowledge to admit or deny the truth of ADS’s allegations

1 concerning its reasoning for negotiating with PacifiCorp. PacifiCorp denies that it refused to put
2 forward standalone contract terms for Pivot and Gray, and PacifiCorp denies all other allegations
3 in Paragraph 9.

4 10. PacifiCorp admits that ADS requested in writing that PacifiCorp confirm it would
5 serve ADS in accordance with existing contracts or else voluntarily transfer these sites to the
6 exclusive service territory of different electric service providers. PacifiCorp denies all other
7 allegations in Paragraph 10.

8 **Service**

9 11. Paragraph 11 contains ADS's counsel's addresses for service and requires no
10 response.

11 **Identity of the Parties**

12 12. PacifiCorp has insufficient information or knowledge to admit or deny the truth of
13 the allegations in Paragraph 12, which relate to the identity, corporate structure, and location of
14 ADS.

15 13. PacifiCorp admits the allegations in Paragraph 13.

16 **Applicable Statutes and Rules**

17 14. Paragraph 14 contains statements and conclusions of law, which require no
18 response.

19 **Jurisdiction**

20 15. Paragraph 15 contains statements and conclusions of law, which require no
21 response.

22 16. Paragraph 16 contains statements and conclusions of law, which require no
23 response.

Factual Background

A. PacifiCorp Is a Regulated Utility with a Statutory Obligation to Provide Service to All Customers without Discrimination.

17. PacifiCorp admits the allegations in Paragraph 17.

18. Paragraph 18 contains statements and conclusions of law, which require no response.

19. Paragraph 19 contains statements and conclusions of law, which require no response.

20. Paragraph 20 contains statements and conclusions of law, which require no response.

B. PacifiCorp Is the Exclusive Provider of Electric Utility Service for the Data Center Campuses.

21. Paragraph 21 contains statements and conclusions of law, which require no response.

22. Paragraph 22 contains statements and conclusions of law, which require no response.

C. ADS Contracted with PacifiCorp for the Delivery of Power to Its Data Center Campuses.

23. PacifiCorp admits that it represented that these facilities were located wholly or partially within PacifiCorp's exclusive service territory.

24. PacifiCorp admits the allegations in Paragraph 24.

25. PacifiCorp has insufficient information or knowledge to admit or deny the truth of the allegations in Paragraph 25 and therefore denies the same.

26. PacifiCorp admits that the contracting process for the data center campuses agreed by the parties in Electric Service Study Agreements (ESSA) consisted of three phases,

1 and that Specialized and Litespeed completed all three phases. PacifiCorp admits that Gray and
2 Pivot completed two phases but denies that PacifiCorp refused to complete the contracting
3 process.

4 27. PacifiCorp admits that the parties executed the ESSAs on the dates alleged, that
5 under the ESSAs PacifiCorp performed preliminary design work and prepared preliminary cost
6 estimates, subject to true-up, and that ADS paid for these preliminary activities.

7 28. PacifiCorp admits that the parties executed the Engineering, Materials and
8 Procurement Agreements (EMPA) on the dates alleged. PacifiCorp admits that under the
9 EMPAs, it conducted activities related to “engineering, permitting, design and procuring long
10 lead materials” and that ADS made prepayments for PacifiCorp’s estimated costs for such
11 activities, subject to true-up.

12 29. PacifiCorp admits that the parties executed MESAs on the dates alleged.
13 PacifiCorp denies all other allegations in Paragraph 29.

14 30. PacifiCorp admits that each MESA obligated ADS to pay for the contracted
15 power at the applicable tariff rates, subject to a contract minimum, as well as the “Actual Cost”
16 of Improvements, but denies that ADS has paid all “Actual Costs.” PacifiCorp admits that ADS
17 has not paid the 32.6 percent gross-up charge.

18 31. PacifiCorp admits the allegations in Paragraph 31.

19 32. PacifiCorp denies the allegations in Paragraph 32.

20 **D. PacifiCorp Failed to Deliver the Power Required by the Specialized Contract.**

21 33. PacifiCorp admits the allegations in Paragraph 33 accurately quote the MESA’s
22 definition of Contract Demand. PacifiCorp does not admit to any analysis, interpretations, or
23 conclusions based upon the language quoted.

1 34. PacifiCorp admits the allegation in Paragraph 34 accurately represents the load
2 schedule in Exhibit A to the Specialized MESA. PacifiCorp does not admit to any analysis,
3 interpretations, or conclusions based upon the language quoted.

4 35. PacifiCorp admits the allegation in Paragraph 35 and footnote 1 accurately quote
5 excerpts of the Specialized MESA. PacifiCorp does not admit to any analysis, interpretations, or
6 conclusions based upon the language quoted or the rule cited in the footnote.

7 36. The allegations in Paragraph 36 regarding PacifiCorp's delivery obligations under
8 Section 6.01 of the MESA are legal conclusions which require no response. To the extent a
9 response is required, PacifiCorp denies the same. PacifiCorp has insufficient information or
10 knowledge to admit or deny the truth of the allegations in Paragraph 36 related to ADS's need
11 for the increase in Contract Demand for Specialized for 2024 to 2026.

12 37. PacifiCorp denies the allegations in Paragraph 37 and the associated figure. To
13 date, PacifiCorp has delivered to Specialized the full amount of power required to meet ADS's
14 actual demand, and PacifiCorp has not failed to deliver power to Specialized that ADS has
15 actually required. Based on PacifiCorp's records, ADS has not required the full Contract
16 Demand—and has not used more than [Begin Confidential] [REDACTED] [End Confidential] at the
17 facility to date—but PacifiCorp could have delivered the current Contract Demand amount had
18 ADS required it.

19 38. PacifiCorp denies the allegation in Paragraph 38.

20 39. PacifiCorp admits that ADS has paid approximately [Begin Confidential]
21 [REDACTED] [End Confidential] to PacifiCorp for capital improvements for Specialized.
22 PacifiCorp has insufficient information or knowledge to admit or deny the truth of the remaining

1 allegations in Paragraph 39 pertaining to ADS's total costs to develop the Specialized and
2 Litespeed data center campuses and thus denies the same.

3 40. PacifiCorp admits that in a July 25, 2025, letter to PacifiCorp, ADS stated it

4 **[Begin Confidential]** [REDACTED]

5 [REDACTED] **[End**

6 **Confidential]** PacifiCorp admits that in a September 2, 2025, letter to PacifiCorp, ADS stated it

7 **[Begin Confidential]** [REDACTED]

8 [REDACTED] **[End Confidential]** PacifiCorp admits that it did not

9 respond in writing to these specific requests from ADS, but PacifiCorp continued to engage in
10 negotiations with ADS regarding service to the four data center campuses and to perform its
11 existing contractual obligations, including by providing power to Specialized in the amounts
12 requested by ADS. PacifiCorp denies that it terminated the negotiations.

13 41. PacifiCorp admits that Section 3.03 of the Specialized MESA contains the
14 language quoted in Paragraph 41. PacifiCorp admits that it has not provided monthly updates in
15 writing, but denies that Section 3.03 requires monthly updates to be provided in writing or that
16 ADS has requested written updates. PacifiCorp denies that it has not provided sufficient updates,
17 **[Begin Confidential]** [REDACTED] **[End Confidential]**. PacifiCorp has responded
18 to all of ADS's requests for updates, and since 2022, PacifiCorp has held weekly meetings with
19 ADS in which PacifiCorp provided any known cost updates.

20 42. PacifiCorp admits that it billed ADS for tax gross-up charges under the
21 Specialized and Litespeed MESAs and that these charges total more than **[Begin Confidential]**
22 [REDACTED] **[End Confidential]**. PacifiCorp admits that the MESAs define "Actual Cost" but
23 denies that the tax gross-up charges are not "Actual Costs," as the tax gross-up charges fall

1 within the definition of “Actual Cost” set out in the MESAs. PacifiCorp admits that it received at
2 least one request from ADS to substantiate these costs but denies that it has not provided
3 justification or documentary support for these costs. To the contrary, PacifiCorp has repeatedly
4 communicated and explained its Contribution in Aid of Construction (CIAC) Tax Gross-Up
5 Policy to ADS in the parties’ weekly calls, other calls outside of regularly scheduled weekly
6 meetings, in-person meetings, and email communications. PacifiCorp denies all other allegations
7 in Paragraph 42.

8 **E. PacifiCorp Failed to Deliver Any Power Under the Litespeed Contract.**

9 43. PacifiCorp admits that the Litespeed MESA obligated PacifiCorp to complete
10 specified improvements and deliver power in accordance with the Contract Demand, but denies
11 that these obligations were absolute or unqualified. Such obligations were subject to other
12 conditions and terms set forth in the MESA.

13 44. PacifiCorp admits that Paragraph 44 accurately quotes a portion of the definition
14 of “Contract Demand” in the Litespeed MESA. PacifiCorp does not admit to any analysis,
15 interpretations, or conclusions based upon the language quoted.

16 45. PacifiCorp admits that Paragraph 45 accurately reflects the load ramp and
17 accompanying text in Exhibit A to the Litespeed MESA. PacifiCorp does not admit to any
18 analysis, interpretations, or conclusions based upon the language or table quoted.

19 46. The allegation in Paragraph 46 is a legal conclusion regarding the interpretation of
20 a contract term which requires no response. To the extent a response is required, PacifiCorp
21 denies the allegation in Paragraph 46. PacifiCorp admits that Section 3.03 of the Litespeed
22 MESA contains the language quoted.

23 47. PacifiCorp admits that Paragraph 47 accurately quotes from Section 6.01 of the
24 Litespeed MESA and that footnote 2 accurately quotes the definition of “Firm Power and

Energy” set forth in the Litespeed and Specialized MESAs. PacifiCorp does not admit to any analysis, interpretations, or conclusions based upon the language quoted.

48. PacifiCorp admits that it has not provided power other than bridging power to the Litespeed campus but denies that it has failed to use commercially reasonable efforts to deliver the power required by the Contract Demand. PacifiCorp admits that ADS has paid approximately [Begin Confidential] [Redacted] [End Confidential] to PacifiCorp for infrastructure improvements for Litespeed. PacifiCorp has insufficient information or knowledge to admit or deny the truth of ADS’s allegation pertaining to ADS’s total costs to develop the Specialized and Litespeed data center campuses and thus denies the same.

49. PacifiCorp denies the allegation in Paragraph 49.

50. PacifiCorp admits that in a July 25, 2025, letter to PacifiCorp, ADS stated it [Begin Confidential] [Redacted] [End Confidential]. PacifiCorp admits that in a September 2, 2025, letter to PacifiCorp, ADS stated it [Begin Confidential] [Redacted] [End Confidential]. PacifiCorp admits that it did not respond in writing to these specific requests from ADS, but PacifiCorp continued to engage in negotiations with ADS regarding service to the four data center campuses and to perform its existing contractual obligations, including by making commercially reasonable efforts to energize Litespeed.

51. As explained in PacifiCorp’s responses to Paragraphs 41, 42, and 50, PacifiCorp denies the allegations in Paragraph 51.

F. PacifiCorp Refused to Enter into MESAs for Pivot and Gray.

52. PacifiCorp denies the allegations in Paragraph 52. PacifiCorp informed ADS that providing service on ADS's requested timelines to Pivot and Gray would require negotiating a service contract and maintained that significant questions remained before the projects could be provided MESAs. ADS willingly engaged in negotiations for a multi-site service contract. PacifiCorp did not insist that such a contract cover all four data centers. PacifiCorp has been and remains willing to serve Pivot and Gray.

53. PacifiCorp denies the allegations in Paragraph 53.

G. PacifiCorp Withheld Its Performance Under the Contracts While Demanding ADS [Begin Confidential] [Redacted] [End Confidential].

54. PacifiCorp admits that ADS sited the four data center campuses wholly or partially in its exclusive service territory. PacifiCorp admits that ADS paid PacifiCorp approximately [Begin Confidential] [Redacted] [End Confidential] under the MESAs. PacifiCorp has insufficient information or knowledge to admit or deny the allegations pertaining to ADS's total costs to develop the data center campuses and what ADS may have relied upon in choosing to develop the data center campuses. PacifiCorp denies all other allegations in Paragraph 54.

55. PacifiCorp denies the allegations in Paragraph 55.

56. PacifiCorp admits that the parties have not yet been able to agree on mutually acceptable terms for a replacement service contract. PacifiCorp lacks information or knowledge sufficient to admit or deny whether ADS acted in good faith. PacifiCorp denies all other allegations in Paragraph 56.

Legal Claims

A. Complainant's First Claim of Relief (Violation of Service Obligations)

57. PacifiCorp refers to and incorporates all its answers to the allegations in the preceding paragraphs.

58. PacifiCorp admits the data center campuses are located wholly or partially within PacifiCorp's exclusive service territory.

59. The allegations in Paragraph 59 are statements of law and legal conclusions which require no response.

60. The allegations in Paragraph 60 are statements of law and legal conclusions which require no response.

61. The allegations in Paragraph 61 are legal conclusions which require no response. To the extent a response is required, PacifiCorp denies that it failed to provide adequate service to the data center campuses or that it breached its statutory obligations to serve.

62. Paragraph 62 contains a request for relief which requires no response.

B. Complainant's Second Claim for Relief (Breach of Specialized MESAs)

63. PacifiCorp refers to and incorporates all its answers to the allegations in the preceding paragraphs.

64. PacifiCorp admits the allegations in Paragraph 64.

65. PacifiCorp denies that ADS performed its obligations under the Specialized MESA. PacifiCorp denies that ADS has been ready and willing to purchase the full amount of the power specified in the Contract Demand to date. PacifiCorp has insufficient information or knowledge to admit or deny the remaining allegations in Paragraph 65 concerning what ADS is ready and willing to do in the future.

66. The statements in Paragraph 66 are legal conclusions which require no response.
To the extent a response is required, PacifiCorp denies the allegations in Paragraph 66.

67. The allegation in Paragraph 67 is a legal conclusion which requires no response.

68. Paragraph 68 contains legal conclusions which require no response. To the extent a response is required, PacifiCorp denies the allegations in Paragraph 68. To date, PacifiCorp has delivered to Specialized the full amount of power required by ADS's actual operations, and PacifiCorp has not failed to deliver power to Specialized that ADS has actually required. Based on PacifiCorp's records, ADS has not required the full Contract Demand—and has not used more than [Begin Confidential] [REDACTED] [End Confidential] at the facility to date—but PacifiCorp could have delivered the current Contract Demand amount had ADS required it.

69. PacifiCorp denies the allegations in Paragraph 69.

70. PacifiCorp admits the Specialized data center campus is within PacifiCorp's exclusive service territory but denies all other allegations in Paragraph 70.

71. Paragraph 71 contains a request for relief and therefore requires no response.

C. Complainant's Third Claim for Relief (Breach of Litespeed MESA)

72. PacifiCorp refers to and incorporates all its answers to the allegations in the preceding paragraphs.

73. PacifiCorp admits the allegations in Paragraph 73.

74. PacifiCorp denies that ADS performed its obligations under the Litespeed MESA. PacifiCorp has insufficient information or knowledge to admit or deny the remaining allegations in Paragraph 74 concerning what ADS is ready and willing to do.

75. The statements in Paragraph 75 are legal conclusions which require no response.
To the extent a response is required, PacifiCorp denies the allegations in Paragraph 75. The

1 Litespeed MESA excuses PacifiCorp from delivery delays caused by ADS and third parties, and
2 the delayed energization of Litespeed was caused by ADS and third-party actions.

3 76. The allegation in Paragraph 76 is a legal conclusion which requires no response.

4 77. Paragraph 77 contains legal conclusions which require no response. To the extent
5 a response is required, PacifiCorp denies the allegations in Paragraph 77.

6 78. PacifiCorp denies the allegations in Paragraph 78.

7 79. PacifiCorp admits the Litespeed data center campus is within PacifiCorp's
8 exclusive service territory but denies all other allegations in Paragraph 79.

9 80. Paragraph 80 contains a request for relief and therefore requires no response.

10 **D. Complainant's Fourth Claim for Relief (Breach of Pivot and Gray ESSAs and**
11 **EMPAs)**

12 81. PacifiCorp refers to and incorporates all its answers to the allegations in the
13 preceding paragraphs.

14 82. PacifiCorp admits the allegations in Paragraph 82.

15 83. The allegation in Paragraph 83 is a legal conclusion which requires no response.

16 84. PacifiCorp admits that one purpose of the ESSAs and EMPAs is to identify the
17 improvements needed for PacifiCorp to provide power to the Pivot and Gray campuses. The
18 ESSAs and EMPAs also provide for other preparatory activities. PacifiCorp denies that it
19 "induced" ADS to enter these contracts through representations that it would enter into MESAs
20 for both campuses.

21 85. The allegation in Paragraph 85 is a legal conclusion which requires no response.
22 To the extent a response is required, PacifiCorp denies that the ESSAs and EMPAs for Pivot and
23 Gray required PacifiCorp to enter MESAs for Pivot and Gray upon ADS's demand. Moreover,

1 the passage of HB 3546 was an intervening event that prevented PacifiCorp from entering a
2 MESA for Pivot or Gray that was inconsistent with HB 3546's requirements.

3 86. PacifiCorp lacks information or knowledge sufficient to admit or deny the
4 allegations in Paragraph 86 concerning what ADS may be ready or willing to do. PacifiCorp
5 denies all other allegations in Paragraph 86. ADS willingly engaged in negotiations over a multi-
6 site replacement service contract.

7 87. PacifiCorp denies the allegations in Paragraph 87. PacifiCorp spent over a year in
8 good faith negotiations with ADS for a service contract that would include service to Pivot and
9 Gray.

10 88. PacifiCorp denies the allegations in Paragraph 88.

11 89. PacifiCorp admits the Gray data center campus is located within PacifiCorp's
12 exclusive service territory. PacifiCorp admits the Pivot data center campus is located primarily
13 within PacifiCorp's exclusive service territory and that PacifiCorp has the exclusive right to
14 serve the Pivot data center campus but denies all other allegations in Paragraph 89.

15 90. Paragraph 90 contains a request for relief and therefore requires no response.

16 **E. Complainant's Fifth Claim for Relief (Interpretation of Specialized and Litespeed**
17 **MESAs)**

18 91. PacifiCorp refers to and incorporates all its answers to the allegations in the
19 preceding paragraphs.

20 92. PacifiCorp admits the allegations in Paragraph 92.

21 93. PacifiCorp admits the allegations in Paragraph 93.

22 94. PacifiCorp admits the allegation in Paragraph 94 accurately quotes the definition
23 of "Actual Cost" in the MESAs. PacifiCorp does not admit to any analysis, interpretations, or
24 conclusions based upon the language quoted.

1 95. PacifiCorp denies that the definition of “Actual Cost” in the MESAs does not
2 encompass gross-up charges for tax on CIAC. PacifiCorp admits that other agreements between
3 ADS and PacifiCorp expressly address a tax gross-up charge but does not admit to any analysis,
4 interpretations, or conclusions based upon this fact.

5 96. PacifiCorp denies that ADS has made “repeated requests” for PacifiCorp to
6 present evidence of its tax liability supporting the charges at issue. In a June 25, 2025, letter ADS
7 stated that it [Begin Confidential] [REDACTED]
8 [REDACTED] [End Confidential] and in a September 2, 2025, letter stated that it [Begin Confidential]
9 [REDACTED]
10 [REDACTED] [End Confidential]. PacifiCorp denies that it refuses to present evidence of
11 its tax liability on ADS’s CIAC or to substantiate its tax gross-up charges.

12 97. Paragraph 97 contains a request for relief and therefore requires no response. To
13 the extent a response is required, PacifiCorp denies the same.

14 **F. Complainant’s Sixth Claim for Relief (In the Alternative, Removal of Exclusive**
15 **Service Territory)**

16 98. PacifiCorp refers to and incorporates all its answers to the allegations in the
17 preceding paragraphs.

18 99. Paragraph 99 contains statements and conclusions of law, which require no
19 response.

20 100. Paragraph 100 contains a legal conclusion which requires no response.

21 101. Paragraph 101 contains a request for relief which requires no response. To the
22 extent a response is required, PacifiCorp denies the same.

23 102. Paragraph 102 contains a request for relief which requires no response. To the
24 extent a response is required, PacifiCorp denies the same.

Prayer for Relief

103. Paragraph 103 contains a request for relief which requires no response. To the extent a response is required, PacifiCorp denies the same.

104. Paragraph 104 contains a request for relief which requires no response. To the extent a response is required, PacifiCorp denies the same.

105. Paragraph 105 contains a request for relief which requires no response. To the extent a response is required, PacifiCorp denies the same.

106. Paragraph 106 contains a request for relief which requires no response. To the extent a response is required, PacifiCorp denies the same.

107. Paragraph 107 contains a request for relief which requires no response. To the extent a response is required, PacifiCorp denies the same.

108. Paragraph 108 contains a request for relief which requires no response. To the extent a response is required, PacifiCorp denies the same.

109. Paragraph 109 contains a request for relief which requires no response. To the extent a response is required, PacifiCorp denies the same.

III. AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

110. PacifiCorp refers to and incorporates all preceding paragraphs.

Background

A. Specialized

111. To interconnect the new load from Specialized to the system, PacifiCorp has incurred approximately [Begin Confidential] [REDACTED] [End Confidential] in transmission system upgrades.¹ Of this total amount, PacifiCorp has paid approximately [Begin

¹ Upgrade figures presented in PacifiCorp's Affirmative Defenses and Counterclaims do not include applicable tax gross-up amounts and reflect estimates that are subject to change.

1 **Confidential** [REDACTED] **[End Confidential]** under the original terms of the Specialized
2 MESA.

3 112. To serve Specialized, PacifiCorp has also acquired transmission service from
4 BPA, UEC, and PacifiCorp Transmission, which costs millions of dollars annually.

5 113. Specialized was energized on **[Begin Confidential]** [REDACTED] **[End**
6 **Confidential]**, and is currently receiving service at PacifiCorp Schedule 48 rates.

7 114. To meet the full Contract Demand at Specialized in the future and provide
8 redundancy as is desired for ADS's operations, PacifiCorp needs to construct additional
9 transmission system upgrades, including a new substation and a new 230 kilovolt (kV) line,
10 which are currently estimated to cost approximately **[Begin Confidential]** [REDACTED] **[End**
11 **Confidential]**. Cost responsibility for these upgrades is not discussed in the Specialized MESA
12 because the upgrades were necessitated by intervening events and therefore were identified after
13 the MESA was executed. However, ADS has been aware of the need for these upgrades since
14 2023, and PacifiCorp understood that ADS was willing to pay for these upgrades.

15 115. To serve Specialized, PacifiCorp may also need to incur significant capital or
16 power purchase costs associated with additional generation. In turn, these generating resources or
17 contracts may require significant investments in transmission infrastructure or third-party
18 wheeling services to integrate them with ADS's load, including many of the same upgrades
19 discussed below for Pivot.

20 116. Section 6.01 of the Specialized MESA states, **[Begin Confidential]** [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] **[End Confidential]**

1 117. Although the Contract Demand was [Begin Confidential] [REDACTED] [End
2 Confidential] in 2024 and PacifiCorp was ready, willing, and able to provide that amount, ADS
3 did not use more than [Begin Confidential] [REDACTED] [End Confidential] at any time in 2024.
4 Similarly, although the Contract Demand is [Begin Confidential] [REDACTED] [End Confidential]
5 in 2025 and PacifiCorp is ready, willing, and able to provide that amount, ADS has not used
6 more than [Begin Confidential] [REDACTED] [End Confidential] to date.

7 118. At no time during 2024 or 2025 did ADS inform PacifiCorp that Specialized
8 required more power than what PacifiCorp was providing.

9 **B. Litespeed**

10 119. PacifiCorp has incurred or committed to incur approximately [Begin
11 Confidential] [REDACTED] [End Confidential] in initial transmission system upgrades
12 necessary to interconnect Litespeed² to the system and designate it as a network load so that
13 PacifiCorp can obtain transmission service to serve Litespeed. Of this total amount, PacifiCorp
14 has paid or is expected to pay approximately [Begin Confidential] [REDACTED] [End
15 Confidential] under the original terms of the MESA.

16 120. To provide redundancy for Litespeed as is desired for ADS's operations,
17 PacifiCorp also needs to construct additional transmission system upgrades, including a new
18 substation and a new 30-mile 500 kV line, at an estimated cost of approximately [Begin
19 Confidential] [REDACTED] [End Confidential]. Redundant service also requires completion
20 of the Boardman-to-Hemingway 500 kV line (B2H) currently being constructed by Idaho Power
21 Company.

² "Litespeed" in this section refers to ADS's Project Litespeed, not the substation with the same name.

1 121. The necessary transmission system upgrades in the initial phase of construction
2 that is currently underway include PacifiCorp's construction of a new substation that connects to
3 Litespeed (Litespeed substation), an additional substation that will connect to the Litespeed
4 substation [Begin Confidential] [REDACTED] [End Confidential] substation), PGE upgrades to the
5 existing PGE [Begin Confidential] [REDACTED] [End Confidential] substation, and PacifiCorp's
6 construction of a new 500 kV line to connect the PGE and PacifiCorp substations.

7 122. The Litespeed MESA provided that PacifiCorp would begin supplying bridging
8 power to Litespeed on [Begin Confidential] [REDACTED] [End Confidential] and begin
9 serving Litespeed with more than bridging power in [Begin Confidential] [REDACTED] [End
10 Confidential].

11 123. However, shortly after the Litespeed MESA was signed, beginning in June 2023,
12 project schedules that PacifiCorp shared with ADS projected a delayed in-service date for
13 Litespeed as compared to the timeline set forth in the MESA.

14 124. Thus, ADS has been aware since shortly after it signed the Litespeed MESA that
15 the dates in the MESA for initially providing power to Litespeed were not realistic.

16 125. After the MESA was signed, ADS requested that PacifiCorp supply [Begin
17 Confidential] [REDACTED] [End Confidential] of bridging power, which is more than the amount set
18 out in the MESA. PacifiCorp accommodated this request.

19 126. PacifiCorp began providing Litespeed with bridging power on [Begin
20 Confidential] [REDACTED] [End Confidential]. PacifiCorp could have provided
21 bridging power in [Begin Confidential] [REDACTED] [End Confidential], but ADS was not ready
22 to receive bridging power on that date because [Begin Confidential] [REDACTED]

1 [End Confidential]. To date, [Begin Confidential] [REDACTED]

2 [REDACTED] End Confidential].

3 127. Litespeed's original date of [Begin Confidential] [REDACTED] [End Confidential]
4 to receive more than bridging power has been delayed by approximately 15 months. PacifiCorp's
5 ability to meet the [Begin Confidential] [REDACTED] [End Confidential] in-service date was
6 contingent upon several intervening steps being completed timely by ADS, PacifiCorp, and third
7 parties.

8 128. One such intervening step was for ADS to provide the Litespeed substation
9 property to PacifiCorp. Consistent with Section 4.02 of the Litespeed MESA, ADS was
10 responsible for turning over a graded site for the Litespeed substation to PacifiCorp.

11 129. During January 2025, PacifiCorp informed ADS that ADS's own contractor, who
12 was responsible for the grading work, had told PacifiCorp that they had not yet started grading
13 and they needed ADS's approval before they could begin. PacifiCorp also informed ADS that
14 this delay to the grading work at the site would ultimately push the projected in-service date to
15 [Begin Confidential] [REDACTED] [End Confidential], depending on how much PGE
16 could tighten its schedule for its [Begin Confidential] [REDACTED] [End Confidential] substation
17 upgrade work.

18 130. ADS did not provide the graded site for the Litespeed substation, as required by
19 Section 4.02 of the Litespeed MESA, to PacifiCorp until March 18, 2025.

20 131. PacifiCorp was responsible for purchasing the property for the [Begin
21 Confidential] [REDACTED] [End Confidential] substation in the [Begin Confidential] [REDACTED]
22 [REDACTED] [End Confidential] area and securing the transmission and distribution easements in
23 that area needed to deliver power to Litespeed.

1 132. PacifiCorp began working on acquiring the needed easements and property
2 acquisition in May 2023, but negotiations with the landowner who owned all but one parcel of
3 the affected property were prolonged due to the amount of land and easements required, lack of
4 alternative options, and complex design issues that needed to be addressed. PacifiCorp
5 completed the necessary easement agreements and started construction on all of PacifiCorp's
6 portions of the project except the Litespeed substation in February 2025.

7 133. PGE is responsible for expanding its [Begin Confidential] [REDACTED] [End
8 Confidential] substation and adding a new line position to enable the planned interconnection
9 with Litespeed. PacifiCorp currently projects a [Begin Confidential] [REDACTED] [End
10 Confidential] in-service date for Litespeed based on PGE's projected date to complete its
11 activities.

12 134. Section 3.03 of the Litespeed MESA provides that

13 [Begin Confidential] [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

[End Confidential]

25 135. Section 6.04 of the Litespeed MESA provides that [Begin Confidential] [REDACTED]
26 [REDACTED]
27 [REDACTED] [End Confidential]

28 136. Section 6.01 of the Litespeed MESA provides that [Begin Confidential] [REDACTED]
29 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] [End Confidential]

5 137. To serve Litespeed beginning in [Begin Confidential] [REDACTED] [End Confidential],
6 PacifiCorp has acquired transmission service from BPA and PGE, which will cost millions of
7 dollars annually.

8 138. To serve Litespeed, PacifiCorp may also need to incur capital or power purchase
9 costs associated with additional generation. In turn, these generating resources or contracts may
10 require significant investments in transmission infrastructure or third-party wheeling services to
11 integrate them with ADS's load.

12 **C. Pivot**

13 139. To interconnect the proposed Pivot facility and serve the facility with ADS's
14 desired redundancy, PacifiCorp currently anticipates that it would need to incur approximately
15 [Begin Confidential] [REDACTED] [End Confidential] in transmission system upgrade costs
16 on PacifiCorp's and other utilities' systems. Necessary upgrades include construction of a new
17 substation and multiple 230 kV and 500 kV lines connecting the new substation to other
18 substations and to Pivot. Pivot's interconnection and transmission service also depend on
19 construction of some of the planned upgrades described above for Specialized and on B2H.

20 140. To serve Pivot, PacifiCorp would also need to incur transmission service costs
21 and interconnection, transmission, and capital or power purchase costs associated with additional
22 generation. In turn, these generating resources or contracts may require significant investments in
23 transmission infrastructure or third-party wheeling services to integrate them with ADS's load.

24 141. ADS has not entered into an electric service agreement with PacifiCorp for Pivot.

D. Gray

142. To interconnect the proposed Gray facility and serve the facility with ADS's desired redundancy, PacifiCorp currently anticipates that it would need to incur approximately [Begin Confidential] [REDACTED] [End Confidential] in transmission system upgrade costs. Necessary upgrades include construction of new 230 kV lines to connect Gray to existing and planned substations and reconductoring other lines. Gray's interconnection and transmission service also depend on construction of some of the planned upgrades described above for Specialized and Pivot, and on B2H.

143. To serve Gray, PacifiCorp would also need to incur transmission service costs and interconnection, transmission, and capital or power purchase costs associated with additional generation. In turn, these generating resources or contracts may require significant investments in transmission infrastructure or third-party wheeling services to integrate them with ADS's load.

144. ADS has not entered into an electric service agreement with PacifiCorp for Gray.

E. Replacement Service Contract Negotiations

145. In early 2024, PacifiCorp recommended that the parties pursue a service contract that would supersede the existing agreements for all four data center campuses, due to the scale of ADS's load requests, ADS's requested timing, and ADS's renewable goals.

146. ADS consented to PacifiCorp's recommendation that the parties pursue a replacement service contract and willingly engaged in negotiations for more than one year.

147. At no time did ADS indicate it did not want to pursue a multi-site replacement service contract.

148. On July 17, 2025, PacifiCorp sent ADS a "last, best, and final" offer for a replacement service contract that included two service contract options. The first involved service to all four data center campuses [Begin Confidential] [REDACTED] [End Confidential], and

1 the second involved service to Litespeed and Specialized only [Begin Confidential] [REDACTED]
2 [End Confidential]. The letter specified that the second option did not foreclose ADS from
3 pursuing future negotiations for service to Pivot and Gray.

4 149. On July 25, 2025, ADS informed PacifiCorp that it preferred [Begin
5 Confidential] [REDACTED]
6 [REDACTED]

7 [End Confidential].

8 150. On August 1, 2025, ADS sent PacifiCorp a term sheet for a service contract
9 [Begin Confidential] [REDACTED] [End Confidential].

10 **F. CIAC Dispute**

11 151. PacifiCorp implemented its CIAC Tax Gross-Up Policy on April 17, 2024.

12 152. The Company's CIAC Tax Gross-Up Policy provides that the Company will
13 apply a tax gross-up factor for 2024 of 32.6 percent—representing the effective federal and state
14 income tax rate for 2024—to customers' CIAC for projects equal to or exceeding \$20 million.

15 153. The Company adopted this policy for customer-funded construction exceeding
16 \$20 million because the income tax on projects of this size can present outsized risk for the
17 Company and other customers and can have a material impact on the Company's cash flow and
18 short-term financial position. In addition, without a tax gross-up for large CIACs, the additional
19 tax liability could be borne by other customers.

20 154. PacifiCorp communicated its CIAC Tax Gross-Up Policy to ADS by October
21 2024 at the latest.

22 155. PacifiCorp provided a copy of its CIAC Tax Gross-Up Policy to ADS on
23 November 27, 2024, via email.

1 156. From October 2024 through July 2025, PacifiCorp fielded questions from ADS
2 related to the policy. PacifiCorp provided information to ADS about the basis for the policy, the
3 application of the policy to the ADS data center developments and in general, and the calculation
4 of the charges. PacifiCorp provided this information and discussed the CIAC gross-up charges
5 with ADS via email, phone calls, and in-person meetings.

6 157. On February 10, 2025, ADS and PacifiCorp executed a Temporary Service
7 Contract for bridging power to Litespeed in which ADS agreed to pay cost adjustments under
8 PacifiCorp's CIAC Tax Gross-Up Policy.

9 158. On March 10, 2025, ADS and PacifiCorp executed a Customer Requested Work
10 Agreement with PacifiCorp for Litespeed in which ADS agreed to pay gross-up charges under
11 PacifiCorp's CIAC Tax Gross-Up Policy for the costs of the construction.

12 159. Section 4.05 of the Litespeed MESA provides:

13 [Begin Confidential] [REDACTED]

14 [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 [REDACTED]

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 [End Confidential]

29 160. Section 4.05 of the Specialized MESA provides:

1 [Begin Confidential] [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] [End
10 Confidential]

11 161. Section 4.05 of the Specialized and Litespeed MESAs further provides, in part:

12 [Begin Confidential] [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED] [End Confidential]

16 162. The tax gross-up charges totaling approximately [Begin Confidential]

17 [REDACTED] [End Confidential] that PacifiCorp billed to ADS on May 19, 2025, were “Actual
18 Cost[s]” within the meaning of the MESAs that PacifiCorp properly billed to ADS pursuant to
19 the MESAs’ true-up provisions.

20 163. On May 19, 2025, pursuant to the CIAC Tax Gross-Up Policy and the true-up
21 procedures set forth in the Specialized and Litespeed MESAs, PacifiCorp sent two invoices to
22 ADS for true-up costs for Specialized and Litespeed, which totaled [Begin Confidential]
23 [REDACTED] [End Confidential], respectively.

24 164. PacifiCorp had previewed the May 19, 2025, invoices containing the CIAC gross-
25 up charges with ADS on May 12, 2025.

26 165. Of the approximately [Begin Confidential] [REDACTED] [End Confidential] in
27 true-up costs for Specialized, [Begin Confidential] [REDACTED] [End Confidential] was for
28 the 32.6 percent gross-up. Of the approximately [Begin Confidential] [REDACTED] [End

1 **Confidential]** in true-up costs for Litespeed, **[Begin Confidential]** [REDACTED] **[End**
2 **Confidential]** was for the 32.6 percent gross-up. Therefore, for both projects, PacifiCorp
3 charged ADS approximately **[Begin Confidential]** [REDACTED] **[End Confidential]** in total for
4 tax gross-up charges on May 19, 2025.

5 166. Despite PacifiCorp's and ADS's months-long discussions regarding the CIAC
6 Tax Gross-Up policy, ADS continued to request information from the Company related to the
7 basis for the CIAC tax gross-up charges included in the May 19, 2025, invoices.

8 167. On June 26, 2025, ADS informed PacifiCorp that it was going to dispute the
9 CIAC gross-up charges in the May 19, 2025, invoices.

10 168. Section 7.03 of the MESAs provides that **[Begin Confidential]** [REDACTED]
11 [REDACTED]
12 [REDACTED] **[End Confidential]**

13 169. ADS did not pay the charges associated with the tax gross-up costs. Instead, ADS
14 paid the amounts it was charged in the May 19, 2025, invoices less the **[Begin Confidential]**
15 [REDACTED] **[End Confidential]** for the tax gross-up.

16 170. ADS still has not paid the approximately **[Begin Confidential]** [REDACTED]
17 **[End Confidential]** for the tax gross-up that it owes under the MESAs.

18 **Affirmative Defenses**

19 **A. PacifiCorp's First Affirmative Defense – Failure of Condition Precedent**

20 171. In compliance with the Litespeed MESA, PacifiCorp has made commercially
21 reasonable efforts to complete the upgrades necessary to interconnect Litespeed and obtain the
22 transmission service needed to serve Litespeed. PacifiCorp has been unable to interconnect and
23 obtain transmission service for Litespeed on the timeline originally contemplated in the MESA

1 due to ADS's delays in fulfilling its obligations under the MESA and because some upgrades are
2 being completed by a third party outside of PacifiCorp's control.

3 172. It is not possible to energize and serve Litespeed, and PacifiCorp is not obligated
4 to energize and serve Litespeed under the MESA until the necessary upgrades are completed.
5 Therefore, PacifiCorp presently has no obligation to deliver Litespeed's full contract demand.

6 173. ADS's claims for relief are barred in whole or in part by failure of conditions
7 precedent.

8 **B. PacifiCorp's Second Affirmative Defense – Waiver and Consent/Ratification**

9 174. ADS consented to PacifiCorp's recommendation that the parties pursue a
10 replacement service contract and willingly engaged in service contract negotiations for more than
11 one year.

12 175. ADS also expressly ratified the decision to pursue a replacement service contract
13 as recently as August 1, 2025, by: 1) informing PacifiCorp [Begin Confidential] [REDACTED]
14 [REDACTED] [End
15 Confidential], and 2) sending PacifiCorp a term sheet on August 1, 2025, for a service contract
16 that provided for service to [Begin Confidential] [REDACTED] [End
17 Confidential].

18 176. Because ADS consented to PacifiCorp's recommendation that the parties pursue a
19 replacement service contract, willingly engaged in these negotiations for more than one year, and
20 ratified this course of action, ADS's claims for relief are barred, in whole or in part, by waiver
21 and/or consent/ratification.

22 177. To date, PacifiCorp has provided Specialized with the full amount of power ADS
23 has required for Specialized.

1 178. Because PacifiCorp has provided Specialized with the full amount of power ADS
2 has required for Specialized; the MESA obligates PacifiCorp to deliver such amounts of power
3 as ADS requires; and ADS did not use its full Contract Demand in 2024 or 2025 despite
4 PacifiCorp being ready, willing, and able to provide those amounts, ADS's claims for relief are
5 barred, in whole or in part, by waiver and/or consent/ratification.

6 **C. PacifiCorp's Third Affirmative Defense – Article XI**

7 179. Article XI of the Specialized and Litespeed MESAs provides, in part:

8 **[Begin Confidential]**

20 **[End Confidential]**

21 180. HB 3546 is a rule, regulation, or order within the meaning of Article XI of the
22 Specialized and Litespeed MESAs.

23 181. HB 3546 passed on June 16, 2025, and took effect on its passage. When HB 3546
24 passed, Article XI required the Specialized and Litespeed MESAs to be automatically amended
25 to the extent the MESAs were noncompliant with HB 3546.

26 182. To the extent the MESAs did not already authorize PacifiCorp to levy the gross-
27 up charges for CIAC on ADS, the passage of HB 3546 automatically amended the MESAs to
28 incorporate gross-up charges for CIAC in the "Actual Costs" for which ADS is contractually
29 responsible.

30 183. ADS's claims are barred in whole or in part by Article XI.

Counterclaims

184. ORS 756.500(5) provides that “any public utility ... may make complaint as to any matter affecting its own rates or service with like effect as though made by any other person, by filing an application, petition or complaint with the commission.”

A. PacifiCorp’s First Claim for Relief – Breach of the Specialized and Litespeed MESAs

185. PacifiCorp refers to and incorporates all preceding paragraphs.

186. ADS did not pay the charges associated with the tax gross-up costs within 90 days, as was required by the dispute procedure set forth in the MESAs. Thus, ADS breached the MESAs by improperly withholding payment of the disputed portion of the May 19, 2025, invoices.

187. ADS still has not paid the approximately [Begin Confidential] [REDACTED] [End Confidential] for the tax gross-up that it owes under the MESAs. Thus, ADS breached the MESAs by failing to pay all “Actual Costs.”

188. PacifiCorp is entitled to relief in the form of a Commission order: (a) finding that ADS breached the Specialized and Litespeed MESAs by failing to pay the tax gross-up charges in the May 19, 2025, invoices; (b) finding that ADS is obligated to pay the tax gross-up charges under the terms of the MESAs and Oregon law; and (c) ordering ADS to promptly pay the charges.

B. PacifiCorp’s Second Claim for Relief – Finding that HB 3546 Applies to Specialized and Litespeed and that ADS Must Pay All Costs of Serving Specialized and Litespeed Incurred After HB 3546’s Effective Date

189. PacifiCorp refers to and incorporates all preceding paragraphs.

190. HB 3546 passed on June 16, 2025, and became effective on its passage.

1 191. HB 3546 defines “large energy use facility” as “a facility that uses or is able to
2 use 20 megawatts or more and is primarily engaged in providing a service described under code
3 518210 of the 2022 North American Industry Classification System.” Specialized and Litespeed
4 each qualify as a Large Energy Use Facility within the meaning of HB 3546.

5 192. Under HB 3546, Section (6), a Large Energy Use Facility that entered a contract
6 for electric service before HB 3546 passed is subject to the requirements of HB 3546 Section (5)
7 if providing electric service to the Large Energy Use Facility requires the utility to “make
8 significant investments or incur costs” after the effective date of HB 3546.

9 193. While ADS and PacifiCorp entered MESAs for Specialized and Litespeed before
10 June 16, 2025, providing electric service to Specialized and Litespeed requires PacifiCorp to
11 make significant investments and incur costs after June 16, 2025.

12 194. HB 3546, Section (5), requires a Large Energy Use Facility to enter a contract
13 with the utility that covers the provision of electric service and includes various requirements for
14 such contracts.

15 195. Therefore, PacifiCorp seeks an order finding that HB 3546, Section (6), requires
16 ADS to enter a contract or contracts with PacifiCorp for electric service to Specialized and
17 Litespeed that comply with the requirements of HB 3546.

18 196. The Commission should specifically order that under such contract(s), ADS must
19 pay for all costs incurred after June 16, 2025, to serve Specialized and Litespeed, including costs
20 of the ongoing and planned upgrades and transmission service, any new generation that is
21 necessary to serve Specialized and Litespeed, and an appropriate contribution to shared system
22 costs.

1 **C. PacifiCorp’s Third Claim for Relief – Finding that HB 3546 Requires ADS to Enter**
2 **a Contract Under Which It Bears All Costs of Serving Pivot and Gray**

3 197. PacifiCorp refers to and incorporates all preceding paragraphs.

4 198. Pivot and Gray each qualify as a “large energy use facility” within the meaning of
5 HB 3546. ADS had not entered contracts with PacifiCorp covering the provision of electricity
6 service to Pivot and Gray prior to the effective date of HB 3546.

7 199. Therefore, PacifiCorp seeks an order finding that HB 3546, Section (6), requires
8 ADS to enter into a contract or contracts with PacifiCorp for electric service to Pivot and Gray
9 that comply with the requirements of HB 3546.

10 200. The Commission should specifically order that under such contract(s), ADS must
11 pay for all costs to serve Pivot and Gray, including costs of the necessary system upgrades,
12 transmission service, and new generation that is necessary to serve Pivot and Gray, and an
13 appropriate contribution to shared system costs.

14 **D. PacifiCorp’s Fourth Claim for Relief – Finding that ADS Must Obtain and Pay for**
15 **Sufficient Non-Emitting Energy to Serve Its Load and Necessary Small-Scale**
16 **Renewable Resources**

17 201. PacifiCorp refers to and incorporates all preceding paragraphs.

18 202. Oregon HB 2021, Section 3(1), establishes emissions reduction requirements for
19 PacifiCorp relative to the utility’s average annual emissions for the years 2010, 2011, and 2012.

20 203. Because Specialized, Litespeed, Pivot, and Gray were not operational during
21 2010, 2011, or 2012, any emissions associated with serving these facilities would increase
22 PacifiCorp’s emissions relative to the baseline, which would increase the amount of required
23 emissions reductions that PacifiCorp would need to make.

24 204. HB 2021, Section 37, amended ORS 469A.210 to require that 10 percent of
25 PacifiCorp’s aggregate electrical capacity be composed of small-scale renewable energy projects

1 by 2030. As PacifiCorp's aggregate electrical capacity increases in order to serve the significant
2 increase in PacifiCorp's load associated with ADS facilities, PacifiCorp's need for resources that
3 comply with HB 2021, Section 37, will also increase.

4 205. To ensure that serving ADS's facilities does not impede PacifiCorp's ability to
5 meet the emissions reduction requirement or shift costs to other customers in violation of
6 HB 3546, ADS must pay all costs of PacifiCorp acquiring sufficient non-emitting generation to
7 serve all of ADS's load in a manner that does not add to PacifiCorp's compliance obligations
8 under HB 2021.

9 206. To ensure that serving ADS's facilities does not impede PacifiCorp's ability to
10 comply with the small-scale renewable requirement or shift costs to other customers in violation
11 of HB 3546, ADS must pay all costs of PacifiCorp acquiring sufficient small-scale renewable
12 capacity to cover 10 percent of the additional electrical capacity PacifiCorp acquires to serve
13 ADS.

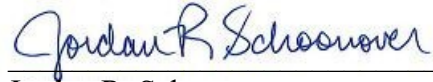
14 **IV. PACIFICORP'S PRAYERS FOR RELIEF**

15 PacifiCorp respectfully requests the Commission:

- 16 1. Deny ADS's claims for relief;
- 17 2. Grant PacifiCorp's Counterclaims; and
- 18 3. Grant any other such relief as the Commission deems necessary and appropriate.

Respectfully submitted this 19th day of December 2025.

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