

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Docket No. UE 399

In the Matter of
PACIFICORP, dba PACIFIC POWER,
Request for General Rate Revision

VITESSE LLC’S POST-HEARING
INITIAL BRIEF

I. INTRODUCTION

Pursuant to OAR 860-001-0650 and the Administrative Law Judge’s October 19, 2022 Procedural Conference Memorandum, Vitesse, LLC (“Vitesse”) submits this Post-Hearing Brief. Vitesse is separately joining a Joint Post-Hearing Brief among all Stipulating Parties to the Fourth Partial Stipulation (the “Stipulation”). Vitesse offers this Post-Hearing Brief to provide additional background and context on the importance and value of PacifiCorp dba Pacific Power’s (“PacifiCorp’s”) proposed voluntary renewable energy tariff (“VRET”), the Accelerated Commitment Tariff (the “ACT”) or Schedule 273.¹ The ACT would enable PacifiCorp to procure clean energy resources to allow eligible cost-of-service customer loads to be served with 100% bundled renewable energy. This Post-Hearing Brief provides additional clarity regarding Vitesse’s perspective: 1) on the ACT as a potential VRET customer and 2) why the Oregon Public Utility Commission (“OPUC” or the “Commission”) should reject NewSun Energy’s (“NewSun’s”) objections and adopt the Stipulation without modification or delay.

¹ PAC/100, Steward/31.

In this brief, Vitesse addresses core aspects of the Stipulation, including those NewSun is not challenging. In summary, Vitesse summarizes its customer perspective on the proposed ACT, and explains how the Stipulation reasonably resolves the following issues: 1) the program cap, enrollment process, and subsequent need for a clear expansion process, particularly for new loads in the context of HB 2021 of 2021 (“HB 2021”); 2) the structure of the VRET as a customer share in resources; 3) the treatment of renewable energy certificates (“RECs”); 4) the customer supply option (“CSO”); 5) the applicability of the Commission’s competitive bidding rules; and 6) the requirement for future workshops. Vitesse addressed these issues in its prior testimony. There are other important aspects of the VRET that are fully addressed, in Vitesse’s view, in the joint testimony and joint brief. Where applicable, Vitesse notes where the expectation is for future proceedings to address concerns such as those NewSun is raising now.

II. ARGUMENT

A. **The Proposed ACT Will Offer Customers like Vitesse an Important Pathway for Achieving Their Corporate Goals**

As a potential ACT participating customer, Vitesse emphasizes the proposed ACT is an important and valuable pathway for achieving a customer’s corporate energy goals. Vitesse has transparently documented its interest and corporate goals in its testimony in this case.² In brief, “Vitesse is a limited liability company that is wholly owned by Meta Platforms, LLC (‘Meta’) and operates data processing and hosting centers across the country, including in Oregon.”³ Meta’s corporate goals include “sourcing 100 percent of

² Vitesse/300, Cebulko/1-4; Vitesse/200, Cebulko/7-8; Vitesse/100, Cebulko/4-7.

³ Vitesse/100, Cebulko/4.

its global operations from renewable energy.”⁴ Currently, Vitesse meets these goals for its Oregon facilities through PacifiCorp’s Schedule 272 Renewable Energy Rider Optional Bulk Purchase Option (“Schedule 272”).⁵ Meta has a history of assisting with the launch of green tariff programs (which include VRET programs), and Vitesse has actively participated in this case to aid in the development of PacifiCorp’s proposed VRET as another avenue for interested customers to meet their corporate goals.⁶ It is also important to Vitesse that any VRET is fair and does not harm non-participating customers.⁷

Vitesse has also explained in its testimony why it is important for Oregon’s future economic development that PacifiCorp have a VRET and have a clear process for growing that VRET, as described further below. This is not a justification for Commission approval, but Vitesse hopes it provides clear context on Vitesse’s interest and hopes for the program. To be clear, “Vitesse does not have immediate plans for future growth in Oregon,” but Vitesse “is likely to have additional data center needs at some point.”⁸ When those needs arise, Vitesse will need to “mak[e] business decisions about where to build new facilities[.]”⁹ Vitesse and many other large load customers “ha[ve] flexibility where to site facilities” but “[a] lack of a clear pathway,” such as the

⁴ Vitesse/100, Cebulko/4; *see also* Vitesse/100, Cebulko/4-5 (discussing these goals in more detail).

⁵ Vitesse/100, Cebulko/6.

⁶ Vitesse/100, Cebulko/5

⁷ Vitesse/100, Cebulko/4.

⁸ Vitesse/100, Cebulko/6

⁹ Vitesse/200, Cebulko/7.

proposed ACT, can “preclude development.”¹⁰ Alternatively, a lack of a clear pathway can instead “favor those companies with less stringent standards or willingness to pay the incremental cost to directly offset the impact of their energy footprint.”¹¹ Vitesse and similarly situated “large load customers with renewable energy commitments will find it challenging to invest in Oregon if there is no clear pathway to support 100 percent of its demand with 100 percent renewable resources today.”¹² Vitesse’s hope is that the proposed ACT, as modified by the Stipulation, provides a clear pathway for environmentally responsible economic development.

B. Program Cap, Enrollment, and Cap Expansion Process

The Stipulation provides a reasonable resolution of the concerns in this case about the VRET cap of 175 average megawatts (“aMW”). Vitesse argued in prior testimony for the 175 aMW cap to apply to existing loads and the Commission to establish a separate 175 aMW cap for new loads.¹³ In the alternative, Vitesse proposed a case-by-case process for cap expansion.¹⁴ While the VRET cap is still arguably outdated,¹⁵ Vitesse found the case-by-case process embodied in the Stipulation “acceptable ... because it creates a path for new load to participate and procure renewable energy, but

¹⁰ Vitesse/200, Cebulko/8.

¹¹ Vitesse/200, Cebulko/8.

¹² Vitesse/200, Cebulko/7.

¹³ See Vitesse/300, Cebulko/4; Vitesse/200, Cebulko/4; Vitesse/100, Cebulko/20.

¹⁴ See Vitesse/300, Cebulko/4; Vitesse/200, Cebulko/4-5; Vitesse/100, Cebulko/21.

¹⁵ The Commission set the limit at 175 aMW for PacifiCorp in 2015 based on then-current direct access levels and has not subsequently revisited this number. *In re Voluntary Renewable Energy Tariffs for Non-Residential Customers*, Docket No. UM 1690, Order No. 15-405 at 1, Appendix A at 11 (Dec. 15, 2015); *In re PGE Investigation into Proposed Green Tariff*, Docket No. UM 1953, Order No. 21-091 at 8-9 (Mar. 29, 2021) (addressing PGE’s cap but not PacifiCorp’s).

also sets clear standards that will protect non-participants and the competitive market.”¹⁶

Vitesse here explains the importance of an option for new loads in the context of HB 2021 and the agreed-upon process in the Stipulation.

1. How Enrollment Will Generally Work

As an initial matter, PacifiCorp will enroll participating customers in the VRET through at least a two-step process. The Stipulation provides:

PacifiCorp will solicit interest in an initial offering to customers to determine participation levels following approval of the ACT. Following this initial offering, PacifiCorp may work with individual large customers to identify specific resources for those customers. PacifiCorp may also make another offering to identify multiple customers wishing to participate in incremental renewable resources.¹⁷

Vitesse witness Cebulko explained Vitesse’s corporate goals require that its investments be “additional” thus it is important that Vitesse’s investments “do not displace renewable investments that would have occurred absent Vitesse’s participation.”¹⁸ Therefore, Vitesse would only potentially participate in the VRET “in a subsequent offering during which the Company and Vitesse can work together to both identify a resource specific for Vitesse as well as mitigate potential conflict with smaller customers on program availability.”¹⁹

¹⁶ Vitesse/300, Cebulko/5.

¹⁷ Stipulation at 4.

¹⁸ Vitesse/300, Cebulko/23.

¹⁹ Vitesse/300, Cebulko/23.

2. HB 2021 Increases the Importance of a VRET Option for New Loads

HB 2021 obligates PacifiCorp and other entities to make their systems average substantially cleaner. Specifically, PacifiCorp must “reduce [its] greenhouse gas emissions ... *100 percent* below baseline emissions level” by 2040.²⁰ In this context, the Legislature has already committed PacifiCorp to clean up its electricity supply. In Vitesse’s view, a well-designed VRET should enable VRET customers to help facilitate the clean energy transition by encouraging clean energy development at no or a reduced cost to other customers. PacifiCorp’s direct testimony noted that:

The ACT will allow PacifiCorp to add incremental renewable resources, beyond planned economic investments, in an expedited manner, accelerating state policy of decarbonization through the voluntary participation of the Company’s participating customers while limiting impacts to all customers. Because the incremental cost of the bundled renewable resource would be borne by the participating customer, the ACT would serve to advance implementation of HB 2021 renewable energy targets while protecting non-participating customers.²¹

Before addressing the Stipulation and VRET cap in further detail, Vitesse here explains its views on new loads in the context of HB 2021. New loads can represent unplanned needs on the utility’s system, in contrast to existing loads. Vitesse witness Cebulko explained:

There is an important difference between these two types of load [new and existing] in how they impact the utility’s grid. Generally, a utility continuously plans and builds its system to meet the needs of its existing load, while new load

²⁰ HB 2021, Or Laws ch.508 § 3 (codified at ORS 469A.410) (emphasis added).

²¹ PAC/100, Steward/31-32.

represents incremental costs (and benefits) beyond such planning that the utility will need to service.²²

PacifiCorp has affirmed that it would acquire resources to meet new loads that are consistent with HB 2021,²³ but there will be procurement costs and likely emissions increases, at least on a short-term basis, for PacifiCorp to meet these new loads.²⁴

If new loads join the system as ordinary cost-of-service customers, those costs and emissions will be socialized among cost-of-service customers. This could make it more difficult to meet HB 2021's requirements and potentially harm other customers.

By contrast, if they join as cost-of-service customers voluntarily partaking in a VRET, other customers will *not* share the premiums associated with those new resources being carbon free. Vitesse believes this is an important benefit for current customers.²⁵

Further, PacifiCorp's witness McVee agreed that:

If PacifiCorp needs to add generation to serve new loads, it will do so only through resources that can meet the non-emitting or renewable energy compliance requirements of HB 2021. If new customers voluntarily want to take on the initial burden of the cost of the incremental renewable energy resource to serve its load, PacifiCorp believes *the Commission should encourage that as an option to avoid overburdening vulnerable communities.*²⁶

Vitesse understands that CUB has concerns about the impacts of new loads on PacifiCorp's system, and that there are circumstances in which new load customers

²² Vitesse/100, Cebulko/19.

²³ PAC/1700, McVee/4.

²⁴ Vitesse/200, Cebulko/10 (citing *In re PacifiCorp 2021 IRP*, Docket No. LC 77, PacifiCorp's 2021 Integrated Resource Plan at 13 (Mar. 31, 2022)).

²⁵ Vitesse/100, Cebulko/20.

²⁶ PAC/1700, McVee/4 (emphasis added).

voluntarily taking on the incremental costs of the new resource to serve that load could harm other customers.²⁷ Vitesse does not disagree that these are legitimate concerns, and recommends that the best way to address these concerns is to accurately set the energy and capacity credits, which will be developed after the completion of the case. For purposes of this case, CUB, Vitesse and the other stipulating parties have already: 1) agreed that “[t]he energy and capacity credit in the ACT cannot exceed an ACT program participant’s cost of participation”²⁸ and 2) negotiated a mutually acceptable solution for new loads to seek permission for future cap expansions on a case-by-case basis.

3. The Stipulation Resolves this Issue and Provides Clear Guidance

Depending on the as-yet-unknown interest in the proposed ACT, it is unclear whether the 175 aMW cap will provide adequate space for potentially interested participants like Vitesse. To address this potential problem upfront, the Stipulation provides a clear process for interested customers to apply to the Commission for VRET expansion.²⁹ Vitesse witness Cebulko explained:

The settlement stipulation states that “a customer with 10 aMW or greater of new load” may request Commission approval of an increase to the participation cap, along with a request that the Commission issue a decision within six months of the filing. I understand the customer would be responsible for demonstrating that the customer’s proposal complies with the law, the Commission’s rules, order conditions, and this settlement. The Fourth Partial Stipulation specifically envisions that the Commission

²⁷ CUB/400, Gehrke/6-8; *see also* PAC/2700, McVee/6 (noting CUB’s testimony appears to focus on Vitesse but this is a topic relevant for “[o]ther large customers”).

²⁸ Stipulation at 3.

²⁹ Stipulation at 2-3.

would consider at least three factors: 1) whether the increase “[p]oses no significant risk or cost to non-participating cost-of-service customers,” 2) whether the increase [p]oses no significant impacts to the competitive market, and 3) whether the increase [a]dvances the goals reflected in HB 2021[.]” The stipulation recognizes that there may be “[o]ther criteria ... [that] demonstrate good cause,” including criteria “determined by the Commission.”

To inform the customer and assist in its demonstration, the settlement first requires PacifiCorp to provide the customer with an analysis that estimates the impact of the new load on the Company’s energy and capacity needs. This analysis will help parties understand the potential impacts of the new load on PacifiCorp’s system. I expect the analysis will also help PacifiCorp decide whether to support and potentially join the customer’s application when it helps to demonstrate that the established criteria are met. Again, I previously testified that allowing new load to come online under a VRET is in the public interest, so this analysis will inform whether that general expectation is met for a particular customer.³⁰

Vitesse witness Cebulko discussed the above criteria for Commission review in more detail, including their origins in Commission guidance on PGE’s VRET and on the New Load Direct Access program.³¹ Witness Cebulko also elaborated on PacifiCorp’s information-providing role in this process, although “[t]he customer and/or other stakeholders will reserve the right to disagree or supplement the utility’s analysis.”³² Finally, witness Cebulko explained that the “major concession” of a 180-day review period instead of his recommended 90-day review period, like the Commission approved for PGE’s.³³ He noted the Stipulation’s 180-day review period was acceptable because

³⁰ Vitesse/300, Cebulko/5-6 (internal citations omitted).

³¹ Vitesse/300, Cebulko/6-10; Vitesse/100, Cebulko/22.

³² Vitesse/300, Cebulko/8.

³³ Vitesse/300, Cebulko/10; *see also* Vitesse/100, Cebulko/22.

“[t]he intention for agreeing to 180 days is that there should be no need for additional extensions beyond the 180 days.”³⁴

In summary, the Stipulation did not adopt Vitesse’s primary recommendation of updating the cap. Rather, it adopts Vitesse’s alternative recommendation and provides a clear process for interested customers to seek expansion on a case-by-case basis.

C. Customer Share in Resources

The Stipulation provides a reasonable resolution of the concerns in this case about adequately assigning participating VRET customers all of the incremental costs *and benefits* of their participation without harming non-participants or the competitive market. In brief, the Stipulation adopts Vitesse’s recommendation with modifications to address PacifiCorp’s concerns. As explained by Vitesse witness Cebulko:

Originally, PacifiCorp proposed to allow participating customers to subscribe to a guaranteed annual delivery volume. Vitesse recommended allowing customers the alternative option of assigning participants “a certain percentage of the output of a facility and allow them to take variable annual delivery volumes” because this approach “better assigns the costs and benefits of a resource.” I understand a variable energy option “is consistent with the design of PGE’s VRET which allows customers to choose a percentage of, or the entire, project.”

The Fourth Partial Stipulation essentially adopts Vitesse’s alternative proposal as the main program design. The Fourth Partial Stipulation eliminates the option for the customer to select a fixed guaranteed annual delivery volume. The ACT Customer share (section 13) provides that “[p]articipants shall take a percentage of variable output from ACT program resources based on their proportional percentage of customer

³⁴ Vitesse/300, Cebulko/10.

participating load to total load participating in a resource or portfolio of resources.”³⁵

D. Treatment of Renewable Energy Certificates

The Stipulation resolved a contentious issue involving the treatment of RECs in situations where a resource is underperforming.³⁶ The Stipulation ultimately resolved this issue to the extent necessary for tariff approval. As explained by Vitesse witness Cebulko:

The important point [of the Stipulation’s terms on this issue] is that neither PacifiCorp nor ratepayers would be expected to incur any losses in order to compensate a VRET customer for these damages [if a developer defaults by underperforming], but only the defaulting developer.³⁷

Vitesse understands NewSun’s objection to primarily seek resolution of the “yet-to-be negotiated PPA terms,” which is out of scope of this proceeding.³⁸ The tariff does not need to resolve how PacifiCorp and a developer would negotiate default terms.

E. Customer Supply Option

The Stipulation fully resolved the contentious issue of a CSO. PacifiCorp did not initially propose a CSO, had concerns about potential impacts on non-customers, and at one point argued the Commission should reject the filing entirely rather than order

³⁵ Vitesse/300, Cebulko/14-15 (internal citations omitted).

³⁶ See Vitesse/300, Cebulko/20; Vitesse/200, Cebulko/21; PAC/2700, McVee/3, 18-20.

³⁷ Vitesse/300, Cebulko/21-22.

³⁸ See generally Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Grey/5-8.

PacifiCorp to add a CSO.³⁹ Fortunately, the Stipulation avoided this outcome and instead presents an agreed-upon CSO option.⁴⁰

Vitesse described the process further in its testimony, but in the interest of brevity is not reiterating that in full here: customers can bring resources to PacifiCorp for review and, if need be, approach the Commission to resolve any PacifiCorp-customer disputes.⁴¹ The resolution of this issue is important to Vitesse, as Vitesse and other similarly situated customers are sophisticated and “may be able to identify a PPA that better meets [their] needs and the requirements of the ACT.”⁴²

To the extent NewSun’s unresolved concerns might involve PPA terms for any CSO resource, Vitesse notes its understanding is that those PPA terms will be collaboratively negotiated in the future. Vitesse witness Cebulko testified:

In the CSO context, Vitesse would envision that, as part of the contract negotiations, the participating customer would work with PacifiCorp to include reasonable contract provisions to address the specific problem of persistent under-delivery (i.e., a default or termination). For example, the contract could specify that the CSO developer is responsible for procuring replacement RECs due to under-delivery. The developer and participating customer might be open to an alternative approach in which the customer is paid damages and procures its own replacement RECs. The stipulation simply clarifies that neither PacifiCorp nor ratepayers would be obligated to compensate a participating customer for the risk of under-delivery from a CSO resource.⁴³

³⁹ PAC/2700, McVee/7-8.

⁴⁰ Stipulation at 5-6.

⁴¹ See Vitesse/300, Cebulko/12-14.

⁴² Vitesse/300, Cebulko/11 (quoting Vitesse/100, Cebulko/26-27).

⁴³ Vitesse/300, Cebulko/22.

While the PPA terms will be important, Vitesse continues to believe the Stipulation and proposed ACT provide ample guidance to interested customers on what to expect from the VRET, and there remains ample opportunity to further hone specific PPA terms in the future.

F. Competitive Bidding Rules

The Stipulation resolves the issue of requirements under the Commission’s competitive bidding rules as applied to acquiring resources under the VRET. Vitesse witness Cebulko explained:

I believe that the Parties were all in agreement that PacifiCorp could use the [2022 all-source request for proposals (“RFP”)] prior to the entering into a settlement.⁴⁴ The Stipulation memorializes that agreement and states that:

The Stipulating Parties agree that the Commission’s competitive bidding rules, including the ability to apply for an exemption or seek a waiver, should apply and that PacifiCorp’s 2022 All-Source Request for Proposal (2022AS RFP) can be used to identify resources, provided negotiations and Commission approvals are completed prior to the bid validity date on November 21, 2023.⁴⁵

I understand this language to mean that the parties agree PacifiCorp can leverage its recent RFP without specifically filing a waiver request, so long as the “negotiations and Commission approvals” conclude prior to the bid validity date, after which PacifiCorp would need to follow the [competitive bidding rules], including making a waiver request as needed.⁴⁶

⁴⁴ PAC/2700, McVee/13 (citing PacifiCorp/1700, McVee/14; Staff/2200, Bolton/12; Vitesse/200, Cebulko/17–19; NIPPC/200, Gray/2). Other parties did not address this issue.

⁴⁵ Stipulation at 4-5.

⁴⁶ Vitesse/300, Cebulko/19.

G. Workshops

The Stipulation contains an additional provision of note involving workshops.

Vitesse witness Cebulko summarized this provision in testimony, noting:

That the settlement only requires one workshop and only on issues encountered and possible refinements is a testament to the work of the parties in this case to resolve unanswered program design questions and deliver a well-designed VRET to PacifiCorp's customers.⁴⁷

III. CONCLUSION

For the foregoing reasons, the Commission should approve PacifiCorp's VRET as modified by the Stipulation and without further modifications.

Dated this 8th day of December 2022.

Respectfully submitted,

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⁴⁷ Vitesse/300, Cebulko/24-25.