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December 22, 2022

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

**Re: Docket UE 399 – In the Matter of PACIFICORP, dba PACIFIC POWER, Request
for a General Rate Revision**

Attention Filing Center:

Attached for filing in the above-referenced docket is the Joint Reply Brief in Support of the Fourth Partial Stipulation.

Please contact this office with any questions.

Sincerely,

Katherine McDowell

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 399**

In the Matter of
PACIFICORP d/b/a PACIFIC POWER'S
Request for a General Rate Revision.

**JOINT REPLY BRIEF IN SUPPORT OF FOURTH PARTIAL STIPULATION
OF
PACIFICORP, STAFF OF THE PUBLIC UTILITY COMMISSION OF OREGON, THE
OREGON CITIZENS' UTILITY BOARD, WALMART INC., VITESSE, LLC, AND THE
NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION**

December 22, 2022

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1 I. INTRODUCTION

2 PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company), Staff of the Public Utility
3 Commission of Oregon (Staff), the Oregon Citizens’ Utility Board (CUB), Walmart Inc.
4 (Walmart), Vitesse, LLC (Vitesse), and the Northwest & Intermountain Power Producers
5 Coalition (NIPPC) (together, the “Stipulating Parties”) submit this Joint Reply Brief in Support
6 of the Fourth Partial Stipulation (Stipulation) in response to NewSun Energy LLC’s (NewSun)
7 Post-Hearing Brief. The Stipulating Parties respectfully request that the Public Utility
8 Commission of Oregon (Commission) reject NewSun’s contentions and approve the Stipulation
9 without modification. The Stipulation establishes a Voluntary Renewable Energy Tariff (VRET)
10 for PacifiCorp, a goal NewSun claims to support.¹

11 NewSun’s Post-Hearing Brief relies on many false assumptions, most notably that the
12 Stipulation and proposed Accelerated Commitment Tariff (ACT) will set the terms of
13 PacifiCorp’s ACT Power Purchase Agreements (PPAs).² This assertion is contrary to the
14 Stipulation, the language of Schedule 273, the pre-filed joint testimony, and the testimony
15 offered at the evidentiary hearing. The terms of the ACT PPAs are yet to be negotiated,
16 including when and how underperformance constitutes a default. NewSun is attempting to use
17 this general rate case process to dictate ACT PPA terms favorable to NewSun even before these
18 PPAs are negotiated. NewSun’s recommendations would place unnecessary restrictions on
19 PacifiCorp’s ability to negotiate the best ACT PPAs for participating and non-participating
20 customers.

¹ NewSun/100, Stephens/4.

² See NewSun Energy, LLC's Opening Brief in Opposition to Fourth Partial Stipulation at 14-15 (Dec. 8, 2022) [*hereinafter* NewSun Opening Brief].

1 **II. ARGUMENT**

2 **A. NewSun’s objections rely on misinterpretations and false statements about the ACT.**

3 **1. The ACT does not set any final PPA terms.**

4 Section 13 of the Stipulation provides that:

5 PacifiCorp shall take reasonable efforts to begin procurement of a replacement
6 resource(s) if an ACT program resource defaults under the PPA, so that in the
7 event of termination, a replacement resource(s) can be available as soon as
8 practicable. PacifiCorp will coordinate with participating customers if the PPA is
9 terminated.³

10
11 Section 4(a) of proposed Schedule 273 implements this provision, stating that:

12 In the event that the renewable energy supplier is in default of the terms of its
13 PPA or is no longer able to supply bundled renewable energy to the Customer, the
14 Company shall make reasonable efforts to begin to procure a new PPA with
15 another renewable energy supplier as soon as practicable with the cost of the
16 renewable energy to the Customer revised accordingly.⁴

17
18 Based solely on this language, NewSun falsely contends that the Stipulation dictates the
19 terms of ACT PPAs, allowing PacifiCorp to terminate an ACT PPA for any default (including
20 any degree of under-performance), thus harming developers and raising resource acquisition
21 costs.⁵ NewSun asks the Commission to remove and “prohibit” any language in the Stipulation
22 implying that default should result in termination or replacement of participating ACT
23 resources.⁶ NewSun also asks the Commission to direct PacifiCorp how to respond in the event
24 of a PPA under-delivery.⁷

25 The Stipulation and proposed Schedule 273 create the ACT program and lay out the basic
26 criteria and structure for the acquisition of ACT resources and negotiation of ACT PPAs.

27 Neither the Stipulation nor proposed Schedule 273 *establish* any PPA terms. The ACT PPAs—

³ Fourth Partial Stipulation at 3-4 (Sept. 30, 2022).

⁴ Fourth Partial Stipulation, Attachment A at 273-1.

⁵ NewSun Opening Brief at 14-15.

⁶ NewSun/100, Stephens/5; *see* NewSun Opening Brief at 14-15.

⁷ *See* NewSun Opening Brief at 14-15.

1 which will include specific events of default and remedies—will be determined by negotiations
2 between the Company and ACT developers, subject to Commission review. Further,
3 PacifiCorp’s acquisition of ACT resources and negotiation of ACT PPAs will be consistent with
4 the Company’s typical practices and industry standards, as described further in this Brief. The
5 Commission should not rule on PPA terms in advance of these negotiations, as NewSun urges,
6 because this could limit the ability of PacifiCorp to obtain the most advantageous agreements for
7 customers and, conversely, for ACT developers to freely negotiate certain terms with
8 PacifiCorp.⁸

9 While the Stipulation and Schedule 273 refer to PacifiCorp’s obligation to make
10 reasonable efforts to begin procurement of a replacement resource upon default, neither
11 document defines the term “default.” Like all other PPA terms, the meaning of this term will be
12 resolved through negotiations between PacifiCorp and ACT developers. The issue of under-
13 delivery and potential remedies will also be addressed in this context. The general term
14 “default” was agreed to by the Stipulating Parties because it recognizes PPA terms have not yet
15 been determined, defers those determinations to a more appropriate time, and avoids potentially
16 confusing customers by using imprecise language in the absence of specific PPA terms.⁹

17 NewSun misinterprets the term “default” as *only* referring to under-delivery of power.¹⁰
18 The word “default” accommodates a range of possible reasons why the PPA may fail, however,
19 and the yet-to-be-established PPAs will specify the remedies available.¹¹ The terms of the
20 Stipulation contain adequate flexibility to protect participating and non-participating customers
21 by allowing a range of possible remedies and assuring customers that the resource will perform

⁸ See Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/5-6.

⁹ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/7-8.

¹⁰ NewSun Opening Brief at 3.

¹¹ Evidentiary Hearing Transcript 56:8-23 (Nov. 18, 2022) [hereinafter Evid. Tr.].

1 as expected.¹² PacifiCorp’s ability to pursue remedies in the case of default is critical to
2 providing a reliable ACT program, and therefore it is reasonable for the ACT to outline
3 PacifiCorp’s obligations if this occurs.¹³

4 NewSun argues that it may be in the best interest of the participating customers for the
5 Company to pursue other possible remedies short of termination, and that the Stipulation allows
6 PacifiCorp to engage in termination and replacement of an ACT PPA at its “sole discretion.”¹⁴
7 NewSun ignores the obvious fact that the ACT PPA counterparties will negotiate to designate the
8 remedies, including termination, that are available to PacifiCorp.¹⁵ In the Joint Response
9 Testimony, the Stipulating Parties were clear that they did not intend the term “default” to
10 capture minor issues or disputes, nor do they believe the Stipulation empowers PacifiCorp to
11 terminate a PPA beyond the commercially typical terms and conditions in place with a PPA.¹⁶
12 Rather, the Stipulating Parties expect PacifiCorp to act reasonably, which is why both Schedule
13 273 and the Stipulation require PacifiCorp to make “reasonable efforts” to procure a new PPA in
14 the event of default.¹⁷ Further, the Joint Response Testimony explains that “[t]he Stipulating
15 Parties expect the Company’s remedy to be responsive to the specific circumstances and with
16 necessary coordination and communication with participants according to those circumstances”
17 and “[t]he Stipulating Parties agree that the proposed Schedule 273 includes a commitment from
18 PacifiCorp that it will coordinate with participating customers in the event that PacifiCorp is

¹² Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/8-9.

¹³ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/8-9.

¹⁴ NewSun Opening Brief at 15.

¹⁵ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/9 (“It is important to emphasize that the language in Schedule 273 and the Fourth Partial Stipulation does not provide PacifiCorp with any additional rights or abilities to terminate a PPA; rather, the tariff confirms that PacifiCorp will fix its program if the PPA resource is not meeting subscribers’ needs.”).

¹⁶ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/6.

¹⁷ Fourth Partial Stipulation at 3.

1 required to replace an underperforming resource.”¹⁸ Thus it is clear that PacifiCorp may pursue
2 remedies short of termination, based on specific circumstances that are not known at this time.

3 In addition, NewSun expresses concern about the “*de facto* performance guarantees” in
4 ACT PPAs.¹⁹ NewSun argues that PacifiCorp witness Mr. Matt McVee “did not deny” that
5 PacifiCorp “intends” to include these terms in ACT PPAs.²⁰ This argument misconstrues the
6 witness’s statement. Mr. McVee says, in response to a question as to whether a performance
7 guarantee will be a requirement of an ACT PPA, that “[PacifiCorp is] going to try to negotiate
8 the best possible balance of price and risk.”²¹ This statement expresses the Company’s intent to
9 engage in a fair negotiation with developers, and not a plan for the Company to impose a
10 contract term on the developer absent negotiation and Commission oversight.

11 **2. *The Commission recently considered PPA performance guarantees and did not***
12 ***preclude them.***

13 NewSun contends that the Commission should “recognize the potential dangers” of
14 performance guarantees in PPAs.²² The Commission recently considered this issue in approving
15 PacifiCorp’s 2022 Request for Proposals (2022AS RFP). In Order No. 22-130, the Commission
16 acknowledged parties’ concerns about performance guarantees but declined to expressly bar
17 them from PacifiCorp’s Pro Forma PPA.²³ Instead, the Commission directed the Independent
18 Evaluator (IE) to “examine the issue” and reserved the right to “judge the reasonableness” of a
19 performance guarantee when reviewing a negotiated PPA in the future.²⁴ Several of the
20 Stipulating Parties have had advocated opposing views in other proceedings on this issue, but

¹⁸ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/9-10.

¹⁹ NewSun Opening Brief at 9.

²⁰ NewSun Opening Brief at 9.

²¹ Evid. Tr. 50:3-6.

²² NewSun Opening Brief at 7.

²³ *In re PacifiCorp, dba Pacific Power, Application for Approval of 2022 All-Source Request for Proposals*, Docket No. UM 2193, Order No. 22-130 (Apr. 28, 2022).

²⁴ Order No. 22-130 at 9-10.

1 with respect to the Stipulation merely note that NewSun’s position seeking to preclude
2 performance guarantees in all ACT PPAs is inconsistent with the Commission’s PPA-specific
3 approach in the 2022AS RFP approval order. The Commission can take official notice²⁵ of the
4 terms of the 2022AS RFP’s Pro Forma PPA, which includes performance requirements, on file
5 in Docket No. UM 2193.

6 NewSun argues that allowing PacifiCorp to negotiate for a performance guarantee may
7 increase risks for project developers and costs for customers, and allow PacifiCorp to evade RFP
8 guidelines.²⁶ NewSun points to the testimony of Mr. Spencer Gray, acknowledging that the
9 terms of a particular PPA may create risks for investors, which leads to higher costs.²⁷ But, as
10 Mr. Gray explained further, many factors go into pricing,²⁸ and the developer will determine
11 whether the *negotiated* terms of a PPA with the Company are acceptable and whether the
12 benefits outweigh the risks. Mr. Gray said nothing about PacifiCorp evading the Commission’s
13 RFP guidelines. Therefore, the Commission should disregard this entirely unsupported and
14 speculative argument.

15 NewSun’s arguments also do not account for the unique needs of the ACT program, as
16 compared to general system resources. Because ACT resources may be procured to match
17 subscribing ACT customers’ needs, a potential underperformance by an ACT resource could
18 impair the ACT program goals and the program’s ability to serve customers. This may make the
19 consequences of underperformance for resources supplying ACT program customers more
20 significant than for underperformance of a general system resource, where other system
21 resources and reserves are available as back up. The Stipulation does not require that an ACT

²⁵ See OAR 860-001-0460(1)(b).

²⁶ NewSun Opening Brief at 9.

²⁷ NewSun Opening Brief at 9-10.

²⁸ Evid. Tr. 45:9-16.

1 resource be subject to any type of guarantee, whether a performance guarantee, a reliability
2 guarantee or otherwise, but the Commission should continue to grant PacifiCorp and prospective
3 resource developers the flexibility to negotiate PPAs to obtain the best possible terms for all
4 customers. However, this flexibility and the unique needs of an ACT customer should not be
5 read to imply that those terms must include a performance guarantee.

6 **3. *The ACT PPAs will be consistent with PacifiCorp’s typical practice and***
7 ***industry standards.***

8 NewSun argues that allowing PacifiCorp to negotiate how underperformance may
9 constitute a default in an ACT PPA would be inconsistent with typical industry practices.²⁹
10 NewSun provides various examples of “master” wholesale agreements which do not deem
11 under-performance a basis for default and termination, and contends that the Commission should
12 force PacifiCorp’s ACT PPAs to align with these documents.³⁰ NewSun further alleges that
13 PacifiCorp did not provide any example PPAs in the record,³¹ showing that there is no factual
14 basis for making a comparison between non-ACT PPAs and ACT PPAs.

15 In fact, the Joint Parties directly rebutted NewSun’s argument based on these master
16 agreements in the Joint Response Testimony.³² As stated in that testimony, the master
17 agreements are irrelevant in this proceeding because they govern fundamentally different
18 transactions than the future ACT PPAs.³³ The master agreements are intended to facilitate spot
19 purchases and short-term trades between counterparties transacting at various market hubs and
20 are not indicative of common provisions in long-term renewable resource PPAs, such as those
21 that will be negotiated as part of the ACT.³⁴

²⁹ NewSun Opening Brief at 2-7.

³⁰ NewSun Opening Brief at 4-5.

³¹ NewSun Opening Brief at 4.

³² See Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/11.

³³ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/11.

³⁴ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/11.

1 The Joint Response Testimony points to specific provisions in these agreements showing
2 their inapplicability to the ACT program.³⁵ For example, PacifiCorp’s participation in the
3 Western Systems Power Pool (WSPP) agreement cited by NewSun is specifically limited to
4 transactions with a term of less than one year.³⁶ The ACT contemplates long-term resource
5 commitments, requiring customers to agree to a supply contract of at least five years and to pay
6 the costs of a mismatch between the term of the customer’s supply contract and the term of the
7 PPA.³⁷

8 In addition, PacifiCorp’s witness Mr. McVee testified at hearing that PacifiCorp does not
9 use the master agreements for long-term renewable PPAs, which are generally negotiated on an
10 individual basis.³⁸ NewSun has submitted no evidence that the master agreements have been
11 used by PacifiCorp or other utilities to purchase electricity from an independent power producer
12 that plans to construct a new, long-term renewable resource. As discussed above, the Pro Forma
13 PPA included in PacifiCorp’s 2022AS RFP includes under-delivery as an event of default, and
14 grants PacifiCorp remedies besides termination.³⁹ The Pro Forma PPA is a starting point for
15 PacifiCorp’s negotiations with developers whose projects are selected in the 2022AS RFP, and is
16 thus more indicative of industry practices for new, long-term resources than the master
17 agreements submitted by NewSun.

³⁵ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/11, notes 21-23.

³⁶ Stipulating Parties’ Joint Post-Hearing Brief in Support of Fourth Partial Stipulation at 23 (Dec. 8, 2022) [hereinafter Joint Post-Hearing Brief].

³⁷ Schedule 273, Original Sheet 273-2 (*see* Fourth Partial Stipulation, Attachment A).

³⁸ Evid. Tr. 53:7-21.

³⁹ PacifiCorp’s 2022 All-Source Request for Proposals, App. E-2.1, Section 11.1, https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/suppliers/rfps/pacificorps-2022-all-source-request-for-proposals/appendix-e-g/PacifiCorp_2022AS_RFP_App_E-2.1_PPA_Document%E2%80%93Generating_Resource_Only.pdf [hereinafter 2022AS RFP].

1 **4. *NewSun’s claims about the 2022AS RFP are inaccurate and outside the scope***
2 ***of this docket.***

3 NewSun alleges that because PacifiCorp will conduct the same RFP for ACT resources
4 and non-ACT resources, all bidders will have to “satisfy the non-standard PPA obligations
5 reflected in the ACT Tariff,”⁴⁰ which will increase procurement costs and harm non-participating
6 customers. NewSun further argues that PacifiCorp admits that bidders to the single procurement
7 will not be able to specify whether their bid is for ACT resources or not⁴¹ and that the Stipulating
8 Parties do not fully appreciate the “fact” that PacifiCorp “intends” to use the same RFP process
9 for both ACT and non-ACT resources.⁴²

10 As to the last point, the Stipulation expressly provides that PacifiCorp’s 2022AS RFP can
11 be used to identify resources,⁴³ as clearly noted in the Stipulating Parties’ joint testimony,⁴⁴ so it
12 is false to allege that the Stipulating Parties are unaware of this fact. Further, as explained above,
13 there is *no* requirement in the ACT for performance guarantees or any other PPA term. In the
14 2022AS RFP, the Company will individually negotiate PPAs for all resources selected, ACT and
15 non-ACT, working off the Pro Forma PPA included in the RFP.⁴⁵ Finally, NewSun’s concern
16 about how non-ACT PPAs are handled in the RFP process belongs in the 2022AS RFP docket,
17 and is outside the scope of this proceeding.

18 **5. *Any use of Company-owned resources will be subject to Commission oversight.***

19 NewSun accuses PacifiCorp of manipulating the 2022AS RFP and the ACT PPA
20 negotiation process to advantage Company-owned resources over third-party resources.⁴⁶

⁴⁰ NewSun Opening Brief at 12.

⁴¹ NewSun Opening Brief at 12-13.

⁴² NewSun Opening Brief at 13-14.

⁴³ Fourth Partial Stipulation at 4-5.

⁴⁴ Joint Stipulating Parties/100, McVee, Bolton, Gehrke, Kronauer, Cebulko, Opatrny/6-7.

⁴⁵ See 2022AS RFP, App. E-2.1.

⁴⁶ NewSun Opening Brief at 11.

1 NewSun claims that the “de facto” performance guarantee will allow PacifiCorp to terminate
2 other PPAs for “trivial defaults,” and look to its own resources instead.⁴⁷ NewSun further
3 alleges that the Stipulation’s reliance on Commission review before use of PacifiCorp-owned
4 resources for the ACT is insufficient, not subject to any legal requirement⁴⁸ and “does not appear
5 to be supported by the Commission’s VRET orders.”⁴⁹

6 First, PacifiCorp is not currently proposing to supply the ACT with a Company-owned
7 resource.⁵⁰ Second, if the Company decides to do so in the future, it is required to submit a filing
8 for Commission approval. Staff has committed to undertake a review that goes beyond the
9 detailed accounting methods and safeguards required for any such filing under the ACT.⁵¹ The
10 Stipulation does not limit any party from taking any position on the application of VRET
11 Condition 7 or any other legal or policy issue concerning the filing.⁵² While NewSun alleges
12 that Staff’s “assumption” that Commission review can provide sufficient oversight over this
13 “does not appear to be supported by the Commission’s VRET orders,”⁵³ NewSun provides no
14 support for this statement. In fact, in Order No. 16-251, which finalized the VRET program, the
15 Commission recognized the concerns with utility ownership of VRET resources, noting
16 Commission review and approval of resource cost allocations is an “obligation” that Staff
17 undertakes for the life of an owned resource.⁵⁴

18 Further, PacifiCorp and the other Stipulating Parties already testified that “The Fourth
19 Partial Stipulation requires that the Company comply with the Commission’s competitive

⁴⁷ NewSun Opening Brief at 11-12.

⁴⁸ NewSun Opening Brief at 17-18.

⁴⁹ NewSun Opening Brief at 17-18.

⁵⁰ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13.

⁵¹ Evid. Tr. 22:5-10.

⁵² Fourth Partial Stipulation at 5.

⁵³ NewSun Opening Brief at 18.

⁵⁴ *In re Public Utility Commission of Oregon, Voluntary Renewable Energy Tariffs for Non-Residential Customers*, Docket No. UM 1690, Order No. 16-251 App. A at 22 (July 5, 2016).

1 bidding rules for the acquisition of all ACT resources—including both the initial resource and
2 any potential replacement resources.”⁵⁵ This requirement will apply to both utility-owned and
3 non-utility owned replacement resources.

4 **6. The Company will coordinate with customers and use competitive bidding if**
5 **resource replacement is necessary.**

6 If an ACT resource can no longer deliver, NewSun argues that the ACT does not create a
7 legally enforceable requirement that the Company consider customer input in replacing a
8 resource,⁵⁶ and that the coordination language in the Stipulation does not go far enough in
9 protecting customers. Further, NewSun argues that the ACT does not specify that competitive
10 bidding is required for replacement ACT PPAs.⁵⁷

11 The Company plans to—and is in fact *required* to—use the competitive bidding process
12 established by the Commission in acquiring all ACT resources, including replacement
13 resources.⁵⁸ In addition, the Stipulation expressly states that PacifiCorp will coordinate with
14 customers in the event that a resource must be replaced.⁵⁹ The Joint Response Testimony
15 explains that “[t]he Stipulating Parties expect the Company’s remedy to be responsive to the
16 specific circumstances and with necessary coordination and communication with participants
17 according to those circumstances” and “[t]he Stipulating Parties agree that the proposed
18 Schedule 273 includes a commitment from PacifiCorp that it will coordinate with participating
19 customers in the event that PacifiCorp is required to replace an underperforming resource.”⁶⁰

⁵⁵ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13.

⁵⁶ NewSun Opening Brief at 16.

⁵⁷ NewSun Opening Brief at 16.

⁵⁸ Evid. Tr. 23:11-21; Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13.

⁵⁹ Fourth Partial Stipulation at 4. *See also* Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13 (“The Fourth Partial Stipulation requires that the Company comply with the Commission’s competitive bidding rules for the acquisition of all ACT resources—including both the initial resource and any potential replacement resources.”).

⁶⁰ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/9-10.

1 The Stipulation is a binding document once approved by the Commission.⁶¹ It has the
2 force of law like any Commission order,⁶² thus, contrary to NewSun’s assertions, PacifiCorp will
3 be bound by its commitment to coordinate with customers. The inclusion of a general
4 coordination requirement protects the interests of participating and non-participating customers.

5 **B. The Stipulation represents a reasonable compromise of competing interests.**

6 **1. *The Stipulation involved all constituencies NewSun claims to represent.***

7 NewSun objects to the Stipulation, claiming to be acting on behalf of wholesale power
8 suppliers and ACT program customers.⁶³ In reality, NewSun intervened in this docket to protect
9 its own interests,⁶⁴ and its objections should be weighed in that context. Further, the Stipulating
10 Parties actually serve the constituencies NewSun purports to protect. NIPPC represents the
11 interests of wholesale power producers and competitive power marketers, Walmart and Vitesse
12 represent the interests of potential ACT customers, CUB represents the interests of non-ACT
13 residential customers, and Staff balances the competing interests of all parties.⁶⁵ After filing no
14 testimony until its challenge to the Stipulation, NewSun is now holding up the approval of the
15 ACT to gain more favorable PPA terms for itself, at the expense of the various parties who
16 joined the Stipulation.⁶⁶

17 **2. *NewSun’s objections are premature and more properly brought in a different***
18 ***proceeding.***

19 NewSun primarily objects to the content of ACT PPAs and the method of acquisition of
20 ACT resources, which will be governed by Commission RFP rules.⁶⁷ However, neither the PPA

⁶¹ Evid. Tr. 40:1-4.

⁶² Fourth Partial Stipulation at 8.

⁶³ NewSun Opening Brief at 1-2.

⁶⁴ NewSun Petition to Intervene at 1-3.

⁶⁵ See Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/5; Joint Post-Hearing Brief at 16.

⁶⁶ See Joint Post-Hearing Brief at 3.

⁶⁷ NewSun Opening Brief at 1.

1 terms nor PacifiCorp’s compliance with RFP rules is before the Commission now, nor is the
2 resolution of these issues necessary to approve the Stipulation. NewSun may bring its concerns
3 to the Commission later in a more appropriate proceeding. The acquisition of ACT resources in
4 an RFP, whether in the ongoing 2022AS RFP⁶⁸ or in a future RFP, will be subject to party
5 review and Commission oversight,⁶⁹ as are the Pro Forma PPA terms that will form the basis for
6 ACT PPA negotiations, as explained earlier. There is no need to address NewSun’s objections at
7 this time.

8 **3. *NewSun’s claim that the Stipulating Parties did not fully understand the***
9 ***Stipulation is false.***

10 NewSun unfairly accuses the Stipulating Parties of failing to fully understand the content
11 and implications of the Stipulation.⁷⁰ NewSun further argues that the standard for modification
12 of the Stipulation is if the parties “did not fully understand or appreciate certain important
13 aspects or nuances of the ACT Tariff terms to which they were stipulating.”⁷¹ NewSun cites no
14 case where the Commission applied this standard. Instead, the Commission has rejected or
15 modified stipulations only when the evidence presented “suggests that the settlement is not in the
16 public interest . . . or otherwise is not in accordance with the law.”⁷²

17 The Joint Testimony clearly acknowledged and described PacifiCorp’s ability to identify
18 and acquire ACT resources as part of the ongoing 2022AS RFP and in other procurement
19 processes that comply with the Commission’s RFP rules.⁷³ When asked about the RFP structure
20 at the hearing, the witnesses acknowledged that the Stipulation contemplates initially acquiring

⁶⁸ See generally Docket No. UM 2193.

⁶⁹ See Joint Post-Hearing Brief at 25-26.

⁷⁰ NewSun Opening Brief at 13, 18-19.

⁷¹ NewSun Opening Brief at 18-19.

⁷² *In re Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision*, Docket. No. UG 435, Order No. 22-388 at 6 (Oct. 24, 2022).

⁷³ See Joint Stipulating Parties/100, McVee, Bolton, Gehrke, Kronauer, Cebulko, Opatrny/6-7; see also Vitesse/300, Cebulko/18-19; NIPPC/200, Gray/2.

1 ACT resources as part of the 2022AS RFP but noted that the exact structure for future RFPs has
2 yet to be established.⁷⁴ Mr. McVee further testified that the Company “may have a specific ACT
3 RFP” or utilize a future All-Source RFP to acquire ACT resources.⁷⁵ While NewSun argues that
4 the witnesses’ statements prove their lack of understanding of the Stipulation and Schedule 273,
5 these statements show the opposite. NewSun’s argument relies on a fabricated standard and
6 misconstrued quotes.

7 **4. The ACT deviates from PGE’s Schedule 55 as appropriate to meet the needs of**
8 **PacifiCorp stakeholders.**

9 NewSun argues that the ACT should more closely replicate Portland General Electric
10 Company’s (PGE) Schedule 55 tariff, as interpreted by NewSun.⁷⁶ In particular, NewSun asks
11 the Commission to require PacifiCorp to replace a defaulted resource with Renewable Energy
12 Certificates (RECs) and allow ACT customers to veto any replacement resource.⁷⁷ While
13 Schedule 55 and the ACT accomplish a similar purpose and follow the Commission’s VRET
14 guidelines, the ACT is the result of compromise among parties, some of the parties’ experience
15 with the PGE tariff, and a design that meets the needs of PacifiCorp’s customers.⁷⁸

16 First, NewSun argues that because the initial draft of the ACT included the use of
17 replacement RECs (as a potential remedy for unmet subscriptions to a fixed production level),
18 the change in the final draft to the use of replacement resources (as a potential remedy for unmet
19 subscriptions to a *variable* production level) may show that PacifiCorp is trying to influence the
20 outcome of the 2022AS RFP in the Company’s favor.⁷⁹ This allegation is false because (1)

⁷⁴ See, e.g., Evid. Tr. 25:18 – 26:3.

⁷⁵ Evid. Tr. 25:5-8.

⁷⁶ See NewSun Opening Brief at 7-9.

⁷⁷ See NewSun Opening Brief at 2.

⁷⁸ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/5.

⁷⁹ NewSun Opening Brief at 8-9.

1 PacifiCorp does not intend to supply the ACT with an owned-resource at this time;⁸⁰ and (2)
2 PacifiCorp and the Stipulating Parties made the above changes to accommodate a range of
3 interests and concerns, including intervenor concerns specifically about the earlier proposed use
4 of unbundled RECs.⁸¹ The Stipulation was the result of a robust negotiation between the
5 interests of competing parties, and the revised ACT represents a compromise for PacifiCorp⁸²
6 and a reasonable resolution of competing interests and concerns.

7 Second, NewSun argues that the ACT would allow PacifiCorp to terminate an ACT PPA
8 even if customers do not agree or expect the termination, and thus the Company should be
9 required to seek the consent of all customers affected by the termination before taking any
10 action. NewSun claims this provision is included in Schedule 55.⁸³ Requiring PacifiCorp to
11 seek the consent of all customers to terminate an ACT resource would be inefficient.⁸⁴ In many
12 cases, there will be multiple customers served by one generating resource and it would be poor
13 policy to allow one customer to veto the replacement resource. Instead, the Commission should
14 approve the Company's coordination commitments to ensure that participating customers' needs
15 are met while non-participating customers are protected.

16 III. CONCLUSION

17 NewSun does not contend that the ACT is contrary to Commission or state policy, but
18 instead seeks the addition of specific language to prematurely dictate PPA terms that advance

⁸⁰ Joint Stipulating Parties/200, McVee, Bolton, Gehrke, Kronauer, Cebulko, Gray/13.

⁸¹ See discussion in Vitesse/300, Cebulko/20.

⁸² See PAC/2700, McVee/18-19.

⁸³ NewSun at 14-15. It is important to note, however, that NewSun may be misinterpreting this tariff. Under Schedule 55, PGE may obtain a replacement resource "at the election of the Subscribing Customer." Portland General Electric Company, PGE Advice No. 19-06, Schedule 55 Green Energy Affinity Rider at Second Revision Sheet 55-3. NewSun interprets this to mean that PGE may only terminate when a customer approves and asks the Commission to include a similar provision in the ACT. However, this language may be read as granting a customer the option to require PGE to obtain a new resource in the event of default.

⁸⁴ Evid. Tr. 38:14-21.

1 NewSun’s own interests—language that representatives of every key constituent group have
2 rejected. NewSun’s arguments are based on false assertions that the ACT dictates PPA terms
3 and that the Stipulating Parties did not understand the terms of the Stipulation and Schedule 273.
4 NewSun provides no basis for rejecting the Stipulation and modifying the terms of Schedule 273.
5 Therefore, the Stipulating Parties respectfully request that the Commission approve the
6 Stipulation and Schedule 273 without modification.

Dated this 22nd day of December 2022.



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