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October 16, 2026

VIA EMAIL TO

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

Re: Docket No. UE 463 – In the Matter of PacifiCorp dba Pacific Power, Advice No. 25-015, Schedule 401-Service to New Large Energy Use Facilities.

Attention Filing Center:

Attached for filing in the above-captioned docket, please find the Stipulating Parties' Brief in Response to Objection and Comments.

Please contact this office with any questions.

Sincerely,

Ellie X. Howard
Paralegal
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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 463

In the Matter of PACIFICORP, dba PACIFIC POWER, Advice No. 25-015, Schedule 401 – Service to New Large Energy Use Facilities.	**STIPULATING PARTIES' JOINT BRIEF IN RESPONSE TO OBJECTION AND COMMENTS**

STIPULATING PARTIES' JOINT BRIEF

October 16, 2026

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I. INTRODUCTION

PacifiCorp d/b/a Pacific Power (PacifiCorp or the company); Staff of the Public Utility Commission of Oregon (Staff); the Oregon Citizens' Utility Board (CUB); and Community Energy Project, Climate Solutions, Oregon Environmental Council, and Sierra Club (Environmental Intervenors) (collectively, the Stipulating Parties) file this Joint Brief in Response to the Data Center Coalition's (DCC) Notice of Opposition; Amazon Data Services, Inc.'s (ADS) Comments on Stipulation; and NewSun Energy's (NewSun) Comments to the Stipulation filed in this docket. The Stipulating Parties respectfully request that the Commission reject DCC's and NewSun's arguments and requests and instead approve the Stipulation without modification as supported in ADS's comments.

The Stipulation is a reasonable compromise that is highly protective of PacifiCorp's non-Large Energy Use Facility (LEUF) customers while remaining fair to LEUFs. The Stipulation is in accord with the public interest as it conserves Commission and party resources and is supported or not opposed by multiple parties representing diverse and competing interests, including owners of data centers.[1] Contrary to DCC's arguments, the Stipulation results in rates that are fair, just, and reasonable and grounded in sound cost causation principles. Schedule 401 and the Stipulation are fully compliant with the POWER Act and all other applicable legal requirements. Although the Stipulation's terms function as an indivisible whole to mitigate the risk of unfair cost shifting from LEUFs, each term was carefully and individually evaluated by the Stipulating Parties and justified on an individual basis in the Stipulating Parties' Joint Testimony. DCC's concerns regarding double-assignment of costs or risk to LEUFs reflect

[1] *See In re Portland Gen. Elec. Co., Detailed Depreciation Study of Electric Util. Props.,* Docket No. UM 2152, Order No. 21-463 at 7 (Dec. 15, 2021); *see also In re Portland Gen. Elec. Co., Application of Corp. Reorganization to Create a Holding Co.*, Docket No. UM 2385, Order No. 26-354 at 23 (Sept. 25, 2026).

misunderstandings about how the Stipulation is designed to prevent cost-shifting while contemplating different cost-allocation scenarios in LEUF Agreements.

DCC requests that the Commission modify the Stipulation in fundamental ways while upholding the terms of the Stipulation that DCC supports, but DCC cannot have it both ways. Adopting DCC's proposed changes to the Stipulation would fundamentally alter the agreement, upsetting the carefully negotiated balance and allowing parties to re-open the Stipulation. Finally, NewSun's proposed modifications to the Stipulation should be rejected as unnecessary because NewSun's concerns about request for proposal (RFP) participation are not supported by evidence and are contrary to the public interest, and the Stipulation already provides adequate protections for LEUF customers during the LEUF interconnection process.

II. BACKGROUND

After nearly a year of process, including five rounds of testimony, the Stipulating Parties entered the Stipulation, which resolves all issues in docket UE 463.[2] The Stipulation provides for a direct contracting approach under Schedule 401 in which New LEUFs are directly assigned their individual costs of service through a LEUF Agreement they enter with PacifiCorp that is then reviewed and approved by the Commission. The Stipulation sets forth a definition of New LEUFs and clarifies that the applicability of Schedule 401 to LEUFs currently engaged in a contested case proceeding with PacifiCorp regarding existing service contracts will be resolved in that contested case proceeding.[3]

The Stipulation describes standard LEUF Agreement terms, which contemplate two different possible contracting approaches.[4] There is also a pathway for LEUFs to enter LEUF

[2] Stipulation at 1 (Sept. 16, 2026).
[3] Stipulation ¶ 15.
[4] Stipulation ¶ 21.

Agreements that depart from the standard LEUF Agreement terms, subject to the Commission's approval.[5] Additionally, the Stipulation sets forth a timeline and process for PacifiCorp or a New LEUF to seek Commission intervention in the event they cannot agree upon LEUF Agreement terms.[6] And the Stipulation provides timelines for PacifiCorp to file LEUF Agreements with the Commission and for the Commission to review LEUF Agreements, although the Commission retains authority to expand its review timeline for good cause.[7]

In addition to the Stipulation's standard LEUF Agreement terms and its provisions surrounding the negotiation, review, and approval of LEUF Agreements, the Stipulation also sets forth additional requirements for New LEUFs, such as an Exit Fee and Collateral Requirement,[8] and it requires that LEUFs larger than 100 MW will be charged a 1 cent/kWh surcharge to fund community energy benefits.[9] It also requires PacifiCorp to make a tariff filing to create a rate class for existing LEUFs not subject to Schedule 401 within 60 days of the rate effective date of docket UE 470.[10] The full terms of the Stipulation are described in detail in the Stipulating Parties' Joint Testimony.[11]

III. LEGAL STANDARDS

A. Standard of Review

Under OAR 860-001-0350(9), the Commission may adopt, reject, or propose to modify a stipulation. If the Commission proposes to modify a stipulation, it must explain that decision and give parties sufficient opportunity to present evidence and argument in support of the stipulation

[5] Stipulation ¶ 20.
[6] Stipulation ¶ 19.
[7] Stipulation ¶¶ 19, 20.
[8] Stipulation ¶¶ 21.l, 29.
[9] Stipulation ¶ 26.
[10] Stipulation ¶ 25.
[11] Joint Testimony of Robert M. Meredith, Bret Stevens, Ryan Tran, and Jeremy Fisher on behalf of PacifiCorp, Public Utility Commission of Oregon Staff, Oregon Citizens' Utility Board, and Environmental Intervenors in Support of Stipulation at 6-83 (Sept. 16, 2026).

on the record.[12] The Commission "review[s] settlements on a holistic basis to determine whether they serve the public interest and result in just and reasonable rates,"[13] as well as whether they meet applicable statutory criteria.[14] A party may challenge a settlement by presenting evidence that the overall settlement yields a result that is "not compatible with a just and reasonable outcome."[15] When a party opposes a settlement, the Commission reviews the issues raised by the party and considers whether the "information and argument submitted by the party . . . suggests that the settlement is not in the public interest, will not produce rates that are just and reasonable, or otherwise is not in accordance with the law."[16] To support the adoption of a stipulation, stipulating parties must present evidence it is in accordance with the public interest and results in just and reasonable rates.[17]

B. The POWER Act

The POWER Act, which took effect on June 16, 2025, requires the Commission to create a separate service classification for retail electricity customers that are large energy use facilities, which are defined as facilities that use or are able to use 20 megawatts (MW) or more and are primarily engaged in providing a service described under code 518210 of the 2022 North American Industry Classification System (computing infrastructure providers, data processing, web hosting, and related services).[18] The POWER Act also requires the new service classification to have its own tariff schedule(s) and sets forth requirements for such tariff schedules, such as

[12] OAR 860-001-0350(9).
[13] *In re Pub. Util. Comm'n of Or., Investigation into Marginal Cost Study Treatment of Costs for Large Customers and Further Modifications to Portland Gen. Elec. Co.'s Rule C and Rule I*, Docket No. UM 2377, Order No. 26-154 at 8 (May 7, 2026).
[14] *In re PacifiCorp, dba Pac. Power, Petition for Certificate of Pub. Convenience and Necessity*, Docket No. PCN 8, Order No. 26-029 at 5-6 (Feb. 3, 2026).
[15] Docket No. PCN 8, Order No. 26-029 at 6.
[16] Docket No. UM 2377, Order No. 26-154 at 8.
[17] *Id.*
[18] House Bill (HB) 3546, 83rd Leg. Assemb., 2025 Reg. Sess. § 2(1)(d), (2).

that the tariff schedules must "(A) Allocate the costs of serving the class … to the class in a manner that is equal or proportional to the costs of serving the class; or (B) Directly assign the costs of serving a retail electricity consumer that is a large energy use facility to the retail electricity consumer."[19]

Additionally, the Act requires that companies providing retail electricity service to LEUFs enter into a contract with the LEUF "that covers the provision of the electricity service, including, as applicable, transmission, distribution, energy, capacity or ancillary electricity services."[20] The Act sets forth various requirements for these contracts, including that they be "consistent with" the criteria the Commission applies when deciding whether to approve a proposed tariff schedule for LEUFs.[21] These criteria require that contracts not result in, or have the potential to result in, increased costs or unwarranted risk to other retail electricity customers; provide for equitable contributions to grid efficiency, reliability, and resiliency benefits; not impede an electric utility's ability to meet state clean energy targets or reduce emissions of greenhouse gases; allow for the procurement of or contracts for renewable generation; and meet any other conditions the Commission may require in the public interest.[22]

IV. RESPONSE TO DCC OBJECTIONS

A. The Stipulation Complies with Oregon Law

1. The POWER Act does not require a stated cost-of-service rate

DCC contends that the Stipulation's failure to provide a stated cost-of-service rate option violates "Oregon's existing cost-of-service, filed-rate, nondiscrimination, and just-and-reasonable-rate statutes."[23] DCC requests the Commission to "require PacifiCorp to offer a

[19] HB 3546 § 2(2)-(3).
[20] HB 3546 § 5(1)(a).
[21] HB 3546 § 5(1)(b)(A)(i).
[22] HB 3546 § 2(3).
[23] Data Center Coalition's Notice of Opposition at 3 (Oct. 1, 2026) [*hereinafter* "Objection"].

transparent stated cost-of-service option while preserving special or non-standard contracts where justified."[24] However, Schedule 401's direct contracting approach is supported by the POWER Act, and none of the statutes cited by DCC establishes that Schedule 401 is illegal because it does not contain a stated cost-of-service rate.

Section 2(2) of the POWER Act directly authorizes the Commission to adopt a tariff schedule for LEUF customers that uses a direct contracting approach because it provides that the Act may be implemented through a class-wide cost-of-service rate or an individualized approach involving direct assignment of the customer's costs of service:

> Any tariff schedule adopted by the [C]ommission for the class must:
>
> (a) (A) Allocate the costs of serving the class of retail electricity customers that are large energy use facilities to the class in a matter that is equal or proportional to the costs of serving the class; ***or***
>
> (B) Directly assign the costs of serving a retail electricity consumer that is a large energy use facility to the retail electricity consumer.[25]

The Act's inclusion of the word "or" between these options indicates that the Legislature intended to give the Commission discretion to approve tariffs that: (1) establish a class-wide cost-of-service rate for a LEUF customer class, (2) directly assign individual LEUFs their costs of service, or (3) reflect a combination of these two approaches. Therefore, the approach of directly assigning each New LEUF's cost of service to that individual LEUF, without also providing a class-wide cost-of-service rate for these New LEUF customers, is permitted under the POWER Act, provided the direct assignment covers the provision of electricity service, including, as applicable, transmission, distribution, energy, capacity or ancillary electricity

[24] Objection at 9.
[25] HB 3546, § 2(2) (emphasis added).

services[26] and mitigates the risk of unwarranted cost shifting.[27] Section 2(3) of the POWER Act then lists the provisions that the Commission must consider when deciding whether to approve the utility's proposed tariff.

DCC also argues that "[t]he POWER Act's express preservation of special contracts, direct access, green power rates, and voluntary renewable tariffs reinforces that these are available service options, not a direction to eliminate the regulated cost-of-service option."[28] The Stipulating Parties understand DCC to be referring to POWER Act Section 5(4).[29] The exact nature of DCC's argument regarding this section is unclear, because the Stipulating Parties have not argued that Section 5(4) of the POWER Act eliminates the class cost-of-service rate options described in Section 2(2). The Stipulating Parties clarify that it is Section 2(2)(a)(B) that directly authorizes Schedule 401's direct contracting approach. Moreover, reading POWER Act Section 2(2) to directly authorize a direct contracting-only approach would not make Section 5(4) redundant, because LEUF Agreements must comply with both the POWER Act's and Schedule 401's requirements for direct contracts and therefore are not the "special contracts" of Section 5(4).

As explained, the text of the POWER Act clearly provides the Commission discretion to approve a tariff that directly assigns costs of service via contract, and therefore it is not necessary to consult the legislative history. Nevertheless, a review of the legislative history, and specifically statements by the POWER Act's chief sponsors, confirms an individual-direct-cost-assignment

[26] HB 3546 § 2(2)(b); *see also* HB 3546 § 5(1)(a).
[27] HB 3546 § 2(2)(c).
[28] Objection at 9.
[29] HB 3546 § 5(4) ("Nothing in this section or section 2 of this 2025 Act is intended to limit or restrict the ability of a retail electricity consumer that is a large energy use facility from using direct access under ORS 757.603 to 757.667 or a green power rate under ORS 469A.205, a voluntary renewable energy tariff or a special contract, as approved by the commission, except the contract must meet the requirements and be consistent with the provisions of this section.").

approach was intended and permissible. In testimony on the POWER Act (House Bill 3546), the sponsors of the bill explained that consumer owned utilities (COUs) have had the ability to serve data centers without passing on the costs associated with serving them to other customers because COUs can directly contract with the data center customers. At a Senate Committee on Energy & Environment hearing on the bill, Representative Pam Marsh explained:

> The strategies employed in house bill 3546 are already in play in communities served by our unregulated consumer owned utilities. Those utilities are very clear that their traditional customer base, also their neighbors, must be protected from the demands of new and very large users that come to town and they are able to negotiate with data centers regarding their energy needs and 3546 we are aiming to emulate those common sense practices in IOU territory.[30]

Similarly, Representative Mark Owens provided a more in-depth explanation of how COUs are able to protect their other customers from the costs of serving data centers because of their ability to directly contract with the customer:

> As we look to Oregonians and the rising prices of electric, our co-op community owned utilities have been able to keep that pretty much in check. And one of the reasons why I believe they have been able to keep it in check is that when a large user even an irrigator wants to come online they sit down the COU and they figure out what is the infrastructure that is going to be needed to provide the electricity, what is that electricity going to cost, and what type of an agreement are we going to sign. So, when I go in there we talk about the cost of the utility poles, the cost of the power, cost of the distribution system and I sign a contract either prorated for 5 to 10 years which pays for the vast majority of the equity of the infrastructure and guaranteeing that I will be able to pay so much a month. And that has been proven to keep the cost of electricity down in COU country.[31]

[30] Audio recording, Senate Committee on Energy & Environment, HB 3546, April 30, 2025, at 00:06:05 (comments of Representative Pamela Marsh), https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2025041379 (accessed Oct 14, 2026).

[31] Audio recording, Senate Committee on Energy & Environment, HB 3546, May 5, 2025, at 00:00:52 (comments of Representative Mark Owens), https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2025051086 (accessed Oct 14, 2026).

Thus, it is clear from both the text of the POWER Act and its legislative history that the Legislature intended the Commission to have discretion to adopt a tariff that directly assigns the costs of serving a data center to that data center through a contract.

2. No other statute requires Schedule 401 to have a stated cost-of-service rate

DCC cites ORS 757.210, ORS 757.230, ORS 757.310 and ORS 757.325, and ORS 757.603 for its argument that Schedule 401 must contain a stated, class-wide cost-of-service rate,[32] but none of these statutes—whether viewed individually or in combination—supports the argument that Schedule 401 is illegal because it does not contain a stated cost-of-service rate.

a. ORS 757.210

DCC suggests that Schedule 401 is inconsistent with ORS 757.210, because this statute contemplates "Commission review of a 'rate or schedule of rates.'"[33] In relevant part, ORS 757.210(1)(a) reads:

> Whenever any public utility files with the … Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine whether the rate or schedule is fair, just and reasonable. … The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable.

This statute speaks to the Commission's review of rate schedules and determination of whether they are just and reasonable; it does not address whether tariffs must contain a stated rate.

Additionally, Schedule 401's direct contracting approach does not preclude the Commission from reviewing a "rate or schedule of rates" and determining whether they are just

[32] Objection at 8-9.
[33] Objection at 8.

and reasonable as required by ORS 757.210.[34] The Commission will determine in this proceeding whether Schedule 401 is just and reasonable, and the Commission will also determine whether the terms of individual LEUF Agreements are just and reasonable when PacifiCorp files them for the Commission's review. Notably, the Stipulation ensures the Commission will have sufficient time to ensure LEUF Agreements will result in fair, just, and reasonable rates by providing that if the Commission does not believe that a 90- or 180-day review period (as applicable) is sufficient for its review, it can extend the review period for good cause.[35]

b. ORS 757.230

DCC also relies on ORS 757.230, which provides that the Commission "shall provide for a comprehensive classification of service for each public utility" and lists factors that may be considered when establishing service classifications. However, while ORS 757.230(1) requires a utility's tariffs to be consistent with permissible service classifications, it does not require a stated, class-wide cost-of-service rate. In fact, it expressly permits service classifications or rate schedules "applicable to individual customers or groups of customers."[36]

c. ORS 757.310 and ORS 757.325

DCC also suggests that Schedule 401's lack of a stated, cost-of-service rate is inconsistent with ORS 757.310 and ORS 757.325, which DCC argues prohibit "unlawful differences, preferences, and disadvantages."[37] ORS 757.310(1) provides "[a] public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount

[34] As the Commission recently explained in docket UM 2377, "the distinction DCC makes between 'rates' and 'terms of service' is an artificial one. Tariffs, by necessity, include both and, in order to ensure that rates are just and reasonable, we must also ensure that service is provided under just and reasonable terms." Docket No. UM 2377, Order No. 26-309 at 5.
[35] Stipulation ¶ 20.
[36] ORS 757.230(1).
[37] Objection at 8.

prescribed in the schedules or tariffs for the public utility," and ORS 757.310(2) provides that "[a] public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances." ORS 757.325(1) provides that "[n]o public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect."

The direct contracting approach in Schedule 401 does not violate these statutes. The Oregon Court of Appeals has interpreted ORS 757.310(1) to work with ORS 757.225 to "prohibit a utility from charging directly more or less for any service than is prescribed in the rate schedule or than it charges anyone under similar circumstances."[38] Here, given the significant differences between individual data centers, the Stipulating Parties anticipate that no two LEUF Agreements will arise in "substantially similar circumstances"[39] and that LEUF Agreements will not result in PacifiCorp charging LEUFs "directly more or less" than other similarly situated LEUFs.[40] Because of the differences between LEUFs, charging LEUFs different rates by virtue of including different terms in their LEUF Agreements or reflecting different costs of service is reasonable and not unduly discriminatory. Moreover, any discrimination concerns that arise related to a specific LEUF Agreement may be addressed during the individual review of the LEUF Agreement, as provided for by the Stipulation,[41] but DCC's claim that LEUF Agreements are inherently discriminatory is inaccurate and unripe as no LEUF Agreements are before the Commission.

[38] *Nw. Climate Conditioning Assoc. v. Lobdell*, 79 Or App 560, 565-66 (1986).
[39] *See* ORS 757.310(2).
[40] *See Nw. Climate Conditioning Assoc.*, 79 Or App at 565-66.
[41] Stipulation ¶ 20.

Additionally, DCC ignores that ORS 757.325(1) does not prohibit any differential treatment whatsoever; it only prohibits utilities from imposing disadvantages or preferences that are "undue or unreasonable." Schedule 401 and the Stipulation do not unduly or unreasonably discriminate between different LEUFs, and in fact, they are protective of LEUFs, because directly assigning LEUFs their cost of service on an individual basis prevents the cost-shifting between LEUFs that would occur if all LEUFs were charged a class-wide rate. Schedule 401 and the Stipulation also do not unduly or unreasonably discriminate between LEUFs and other customer classes, because the POWER Act authorizes a direct contracting approach and sets LEUFs apart based on the Legislature's recognition that LEUF loads bring unique risks.

d. ORS 757.603

DCC argues that ORS 757.603 "most directly" conflicts with Schedule 401's direct contracting approach because, according to DCC, ORS 757.603 "requires an electric company to provide retail customers connected to its distribution system with a regulated cost-of-service rate option unless the Commission grants a statutory waiver after the required process."[42] However, there is nothing in ORS 757.603 that requires the regulated cost-of-service rate option to be a *class-wide* stated rate.

ORS 757.603(1) provides: "Except as provided in this section, an electric company shall provide all retail electricity consumers that are connected to the electric company's distribution system with a regulated, cost-of-service rate option." A "regulated, cost-of-service rate option" is exactly what Schedule 401 is—LEUF Agreements under Schedule 401 will assign LEUFs their cost of service and are regulated by the Commission.[43] ORS 757.603(1) does *not* require that the cost-of-service option reflect a class-wide cost of service.

[42] Objection at 8-9.
[43] *See* ORS 757.603(1).

This interpretation allows ORS 757.603(1) to be read in conjunction with Section 2(2)(a)(B) of the POWER Act, which permits "[d]irectly assign[ing] the costs of serving" individual LEUFs. If ORS 757.603 were read to require only a class-wide cost-of-service option, a utility would never be able to directly assign costs to a customer. But the POWER Act is not so limiting; rather, as discussed above, Section 2(2)(a)(B) allows a direct-assignment cost-allocation framework. Thus, the only way to give full meaning to the POWER Act is to read ORS 757.603 as allowing a utility to provide individualized cost-of-service rate options.[44]

While ORS 757.603(1) must be interpreted in a way that does not conflict with the direct-contract option in the POWER Act if at all possible,[45] even if there were a conflict, the POWER Act would control as the more recent and specific statute because it specifically addresses tariff requirements for data centers.[46]

e. DCC's interpretation of these statutes is implausible and would make bad policy.

In addition to being contradicted by the plain text of the statutes DCC cites, DCC's interpretation of these statutes is inconsistent with precedent. Under DCC's theories, special contracts with a negotiated rate would be prohibited, even though such contracts have existed for decades.[47]

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[44] ORS 174.010 (establishing a general rule of statutory construction where if there are "several provisions or particulars such construction is, if possible, to be adopted as will give effect to all"); *D.E. Shaw Renewable Invs. v. Dep't of Revenue*, 371 Or 384, 391 (2023) ("[W]hen we are asked to resolve an apparent conflict between two statutes, we must attempt to construe the statutes in a manner that will give effect to both.").

[45] *Id.*

[46] ORS 174.020(2) ("When a general provision and a particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent."); *D.E. Shaw*, 371 Or at 391 ("To the extent that two statutes cannot be harmonized, a more specific and later-enacted statute will control over a general earlier-enacted statute.").

[47] *See, e.g.*, *In re Portland Gen. Elec. Co. Request for Approval of the Steam Contract Between PGE and Boardman Foods, Inc.*, Docket No. UE 238, Order No. 11-429, at 2 (Oct. 28, 2011) (approving a special contract); *In re the Application of Pac. Power & Light Co. for an Order Authorizing a Cont. Between PP&L and Or. Metallurgical Corp. for Non-Firm Take-or-Pay Service for 12 Months. Advice No. 96-155.*, Docket No. UE 97, Order No. 96-151

f. DCC's concern ignores the Stipulation's protective terms.

Finally, DCC's concern that relying on individual agreements to implement the POWER Act could result in LEUFs "hav[ing] to accept disputed commercial terms"[48] is invalid, because Paragraph 19 of the Stipulation provides a pathway for prospective customers to bring disputes regarding LEUF Agreements that are being negotiated to the Commission.[49] LEUFs are further protected by the Commission's review of negotiated LEUF Agreements, which ensures that before an Agreement can take effect, the Commission must find that it results in fair, just, and reasonable rates.[50] The Commission must reject a contract that does not result in fair, just, and reasonable rates, so there is no chance of a LEUF customer being forced to take service under unreasonable or unfair terms.

3. HB 2021 and Resource Eligibility Limitations

DCC requests the Commission to either remove or narrow the Stipulation's provisions regarding HB 2021 compliance that DCC considers "overbroad," specifically Paragraphs 21.f and 33.[51] Paragraph 21.f provides:

> PacifiCorp will analyze the generation and capacity resources necessary to serve the New LEUF's load without impeding PacifiCorp's compliance with HB 2021 or its small-scale renewable mandate from ORS 469A.210. Any incremental resources PacifiCorp acquires for the purpose of serving a New LEUF will be non-emitting. The analysis used to support the LEUF Agreement will ensure that to the extent a New LEUF is served with existing, emitting resources, the New LEUF will be responsible for emissions reductions associated with electricity delivered to other Oregon PacifiCorp customers such that the New LEUF does not cause an increase in PacifiCorp's emissions or shift the costs of HB 2021 compliance onto other customer classes. Each LEUF Agreement will ensure that the New LEUF's load is served in a manner that does not harm PacifiCorp's resource adequacy position or

(June 7, 1996) (same); *Wah Chang v. PacifiCorp*, Docket No. UM 1002, Order No. 01-185, at 2 (Feb. 21, 2001) (recounting a special contract's origin and approval by the Commission).

[48] Objection at 9.

[49] Stipulation ¶ 19 ("If the parties have not executed a LEUF Agreement within 180 days of completion of the service study, either party may file an unexecuted LEUF Agreement and request Commission resolution of disputed terms.").

[50] Stipulation ¶ 20.

[51] Objection at 10-11.

impede its HB 2021 or small-scale renewable compliance positions for existing customers. PacifiCorp's analysis used to determine a New LEUF's impact on HB 2021 compliance will be included in its filing for LEUF Agreement approval with the Commission.

DCC states that the POWER Act does not permit PacifiCorp to "transfer its system-wide emissions-reduction obligation to an individual customer as a condition of service" and imposes "customer-specific compliance obligations."[52] However, Schedule 401 does not go beyond what the POWER Act requires or require LEUFs to reduce PacifiCorp's emissions. The LEUF obligations regarding HB 2021 compliance set out by the Stipulation are neither open-ended nor transfer PacifiCorp's compliance obligation wholesale to LEUFs; they are specific and limited to simply holding LEUFs to having a net-zero impact on PacifiCorp's emissions so LEUFs do not make HB 2021 compliance harder to achieve. As the Commission recently observed, "ORS 757.295(1)(b)(A)(i) states that any contract entered into by a data center must 'be consistent with the criteria listed under ORS 757.292(3).' That includes whether the contract entered into impedes HB 2021 compliance."[53]

The Stipulation aligns with the POWER Act's requirement that a LEUF tariff not "impede the electric company's ability to meet the clean energy targets set for in [HB 2021]."[54] If anything, the Stipulation adopts a narrow interpretation of how a LEUF may "impede" HB 2021 compliance, only requiring that New LEUFs do not directly cause an increase in PacifiCorp's emissions. The requirement that LEUFs be responsible for emissions reductions on behalf of non-LEUF customers comes into play only if the LEUF is served by existing PacifiCorp resources that are emitting and only to the extent needed to ensure that the LEUF is not pushing emissions-reduction-compliance costs onto other customers.

[52] Objection at 10-11.
[53] Docket No. UM 2377, Order No. 26-309 at 5.
[54] HB 3546 § 2(3)(c).

DCC also criticizes the Stipulation for not "establish[ing] an objective methodology for identifying the emissions obligation, valuing the required reductions, crediting customer-provided resources, or determining when that responsibility ends."[55] However, this criticism ignores that PacifiCorp will file its detailed analysis to implement Paragraph 21.f. with the Commission.[56]

DCC also notes that HB 2021 "supplies mechanisms for circumstances in which compliance would threaten reliability or fair, just, and reasonable rates, including the temporary-exemption and compliance-cost-cap provisions in ORS 469A.440 and ORS 469A.445," and states that LEUFs should not be subject to customer-specific HB 2021 compliance obligations "without access to the statutory protections designed to limit unreasonable compliance costs."[57] But giving LEUFs access to exemptions and cost-caps for HB 2021 compliance would be inconsistent with both HB 2021's text and with the POWER Act's requirement that LEUF Agreements not impede PacifiCorp's compliance with state policy.[58]

B. <u>Cumulative Operation of Stipulation Provisions</u>

DCC questions whether the "cumulative financial obligations" that Schedule 401 creates for LEUFs "are supported by the costs and risks PacifiCorp actually faces."[59] DCC argues that the Commission "should require the proponents [of the Stipulation] to identify what cost or risk each layer addresses after accounting for the others, and to provide enforceable credits or limitations where the same investment, capacity responsibility, or risk is otherwise captured more than once."[60] Specifically, DCC argues that the Commission should require "a reconciliation for

[55] Objection at 10.
[56] Stipulation ¶ 21.f.
[57] Objection at 10-11.
[58] *See* HB 3546 §§ 2(3), 5(1)(b)(A)(i).
[59] Objection at 2.
[60] Objection at 2-3.

each LEUF Agreement and in the next Schedule 401 review" identifying eight types of information.[61]

But the Stipulating Parties have already clearly identified "what cost or risk each layer [of the Stipulation] addresses after accounting for the others."[62] The Stipulating Parties' individual testimony and Joint Testimony supporting the Stipulation identify the specific cost or risk the various provisions of a LEUF Agreement address and why each "layer" is not duplicative. Additionally, LEUF Agreements under Schedule 401 will be designed to avoid double-counting, and Paragraph 20.a of the Stipulation requires PacifiCorp to provide a description of how a LEUF Agreement's structure is designed to avoid double-counting when it files the LEUF Agreement with the Commission.

DCC's concern about the cumulative operation of provisions in the Stipulation appears to stem from a misunderstanding about how the Stipulation will be implemented. DCC states that a "cumulative inquiry matters especially here because Schedule 401 can combine upfront customer funding with recurring charges, contingent departure liability, and security obligations."[63] DCC suggests that LEUF contributions in aid of construction (CIAC) "can substantially eliminate the very risks invoked to justify additional protections."[64] However, upfront funding is just one pathway the Stipulation provides for LEUF customers. LEUF customers also have the choice to pay for their generation costs over time through the Reservation Charge.[65] In circumstances where a LEUF customer has provided significant upfront funding, other LEUF Agreement terms are adjusted accordingly. For example, Schedule 401's collateral requirement establishes that

[61] Objection at 13-14.
[62] Objection at 2-3.
[63] Objection at 11.
[64] Objection at 3.
[65] Stipulation ¶ 21.h.

LEUFs must post collateral that reflects unpaid customer funding obligations, meaning that if a customer opts to advance significant CIAC, their collateral requirement would be less than if the customer opted to forego upfront funding and instead pay the Reservation Charge.[66]

DCC also suggests that the Stipulation reflects an incomplete cost-causation analysis because it considers only risk and not the benefits of LEUF load.[67] However, the Stipulation provides opportunities to credit customers for the benefits they provide. For example, in circumstances where a LEUF opts to bring its own generation, it will receive a generation credit to ensure that any system-wide benefit from its resource(s) accrues to the LEUF.[68] Notably, the approach of negotiating individual LEUF Agreements under Schedule 401 offers significantly *more* opportunity to compensate an individual LEUF for its unique benefits than would be available under a class-wide stated LEUF rate.

C. Modification of Transmission Cost Allocation

1. Proportional allocation of Network Upgrades

DCC takes issue with the Stipulation's approach to assigning the cost of Network Upgrades to LEUFs, arguing that under the Stipulation, when a Network Upgrade qualifies for proportional allocation because it is a Qualified Network Upgrade, the Stipulation "allocates the cost of capacity beyond the LEUF's identified need according to the relative shares of presently known demand, without separately evaluating who will benefit from that additional capacity."[69]

However, the Stipulation's approach to allocating the costs of Network Upgrades is required by the POWER Act, which requires Schedule 401 to "mitigate the risk of [o]ther classes of retail electricity consumers paying unwarranted costs [and of] [s]hifting the costs, in an

[66] *See* Surrebuttal Testimony of Robert M. Meredith at 4, ¶ 8 (PAC/301, Meredith/4) (July 28, 2026).
[67] Objection at 12.
[68] Reply Testimony of Craig M. Eller at 20-21 (PAC/200, Eller/20-21) (June 11, 2026).
[69] Objection at 14-15.

unwarranted manner, of serving a [LEUF] to other classes of retail electricity consumers, including costs of an electric company to meet load requirements resulting from the provision of electricity service to a retail electricity consumer that is a large energy use facility."[70] Additionally, Section 2(3)(a) of the POWER Act requires the Commission to consider whether the rates from Schedule 401 will "[r]esult in, or have the potential to result in, increased costs or unwarranted risk to other retail electricity consumers."

It is not always possible to construct a transmission line or other upgrade to provide exactly the capacity needed at a specific point in time. Transmission assets generally come in standard sizes, so it is rare that a new asset can be constructed in the exact size needed to serve a LEUF. If a line (or other facility) is built to serve a LEUF and is a Qualified Network Upgrade, then the proportion of PacifiCorp's present need for the facility attributable to the LEUF is the proportion of the upgrade's costs that the LEUF is responsible to pay for, even if that proportion is greater than the proportion of the equipment's total rating that is made up by the LEUF's capacity need. To prevent increased costs or unwarranted risk being shifted to non-LEUF customers and comply with the POWER Act, the Stipulation's transmission-cost-allocation framework appropriately requires LEUFs to pay for the Network Upgrades they *cause*, which may not be the same thing as their "identified need."[71]

Second, DCC also takes issue with the "80 percent threshold," arguing that it "creates a sharp and unsupported change in treatment."[72] However, 80 percent was a negotiated term that reasonably approximates a cutoff where the LEUF drives a significant majority of the need for the facility. Under these circumstances, allowing a LEUF to pay for only its proportional share of

[70] HB 3546 § 2(2)(c).
[71] *See* Objection at 15.
[72] Objection at 15.

the total capacity of the Network Upgrade would likely lead to unwarranted cost shifting in violation of the POWER Act, because the LEUF would be the clear cause of the investment even though the investment does not exactly match the LEUF's capacity need. Additionally, as PacifiCorp explained in its Surrebuttal Testimony, it is fair for LEUFs to be directly assigned the cost of certain Network Upgrades even if the upgrade benefits other customers. In these circumstances, the upgrade might not have been built when it was, or built at all, if not for the LEUF; it is possible that non-LEUF customers will not benefit from the facility for many years; and the LEUF is the chief beneficiary of the upgrade.[73]

Finally, DCC objects to the surcharge established by Paragraph 36 that applies when a LEUF accelerates construction of a planned facility.[74] DCC argues that PacifiCorp needs to "identify the actual acceleration caused by the LEUF, allocate only the attributable share, and prevent the accelerated facility from simultaneously producing unreconciled recovery through other transmission mechanisms."[75] The Commission should reject this recommendation as unnecessary. PacifiCorp anticipates that its negotiations with an individual LEUF will explore the details of the acceleration caused by the specific LEUF. In addition, Paragraph 20.a. of the Stipulation requires PacifiCorp to include a description in LEUF Agreement filings about how the contract structure is designed to avoid double-counting.

2. Allocation of embedded system transmission costs

DCC also raises a concern that the direct assignment of transmission assets plus the OATT-based Peak Demand charge could lead to over-allocation of embedded system costs to LEUFs.[76] DCC argues that removing customer-funded Network Upgrades from rate base is not

[73] PAC/300, Meredith/35-36.
[74] Objection at 15.
[75] Objection at 15.
[76] Objection at 15-17.

sufficient to prevent over-allocation and recommends that if any Network Upgrades providing system-wide benefits are directly assigned to a LEUF, then only the portion of load not already used to assign growth-related investment should participate in the allocation of embedded system costs. DCC also argues that the Peak Demand Charge should only apply to the portion of LEUF load not deemed served by those directly assigned upgrades.[77]

It is reasonable and appropriate for LEUFs to contribute to shared system costs through a charge that is based on OATT rates. The intent of this charge is not to impose duplicative cost recovery on LEUFs, but rather to ensure that LEUFs are fairly allocated their portion of shared transmission system costs, which is distinct from the more general A&G expense. There are many costs of PacifiCorp's transmission system included in OATT rates that are included in the Peak Demand Charge, beyond the incremental cost of connection that LEUFs should pay.

In addition, the POWER Act prohibits unwarranted cost shifting, which makes setting the Peak Demand Charge at the LEUF's highest monthly demand, rather than the LEUF's demand during a system coincident peak, a reasonable precaution. For example, if a LEUF uses 300 MW during coincident peak but 500 MW during another time of the month, that may result in prohibited cost shifting. Finally, consistent with Paragraph 20.a of the Stipulation, which requires PacifiCorp to explain how a contract is structured to avoid double-counting, PacifiCorp will remove any duplicative costs and ensure costs already paid by a LEUF are not included in the Peak Demand Charge.

[77] Objection at 15-16.

D. Limitations on Exit Fee and Collateral Requirement

1. Exit Fee

DCC raises a concern that the Exit Fee described in Paragraph 21.l of the Stipulation and the Reservation Charge described in Paragraph 21.h of the Stipulation lead to double-recovery. Specifically, DCC argues that because the Exit Fee recovers the net book value of company-funded infrastructure and the Reservation Charge itself recovers capital and maintenance costs associated with the facilities and resources needed to serve the LEUF, the Exit Fee will recover the same principal twice if the remaining Reservation Charge that is recovered by the Exit Fee recovers the same capital as the net book value of company-funded infrastructure.[78]

However, LEUF Agreements will not have Exit Fee provisions that would recover duplicative costs from LEUFs; rather, Exit Fees will be tailored to an individual customer's situation and will not enable PacifiCorp to double-recover. Paragraph 21.l of the Stipulation describes the types of costs that are *eligible* to be recovered by the Exit Fee; it is not a formula that requires all these costs to be summed to establish the Exit Fee in every LEUF Agreement. Indeed, some LEUF Agreements may not include a Reservation Charge if the LEUF opts for a CIAC approach instead. It is reasonable and appropriate to draft the Exit Fee provision of the Stipulation to cover the variety of costs and charges that might be properly included in the Exit Fee under the different contracting structures that LEUF Agreements under Schedule 401 may take.

DCC states that in docket UM 2377 the Commission created a mechanism to reduce Portland General Electric Company's (PGE) Exit Fee if it would recover more than PGE's actual stranded cost exposure, and DCC proposes that Schedule 401 should also contain "an explicit

[78] Objection at 17.

net-exposure calculation."[79] However, this recommendation is unnecessary for the reasons explained above. Additionally, the Stipulation provides that if "another large customer takes service within three years of an exiting LEUF's departure, the Exit Fee will be refunded by a pro-rata share of the capacity assumed by the new large customer."[80]

2. Collateral Requirement

DCC argues that "[i]f the underlying Exit Fee is overstated, collateral magnifies the burden," and recommends "timely step-downs as exposure declines."[81] DCC also recommends that Schedule 401 permit "reasonable credit alternatives."[82]

The Commission should reject DCC's recommendation for "timely step-downs" as unnecessary. As DCC acknowledges, Paragraph 29 of the Stipulation already provides that the amount of collateral will be reassessed every two years. A more frequent time frame for reassessing the amount of collateral is unnecessary; two years is a reasonable compromise and ensures that to the extent the company's exposure has decreased, that is timely reflected by a decreased collateral requirement for a LEUF customer.

Additionally, the Stipulation's creditworthiness requirements are reasonable and appropriate and should not be revised in response to DCC's vague suggestion for "reasonable credit alternatives."[83] The Stipulation provides an appropriate minimum credit rating requirement as well as an alternative credit review pathway for customers who do not have such a rating for their senior secured long-term debt.[84]

[79] Objection at 18.
[80] Stipulation ¶ 21.l.
[81] Objection at 19.
[82] Objection at 19.
[83] Objection at 19.
[84] Stipulation ¶ 29.

E. Community Energy Benefits Charge

DCC raises concerns that the community energy benefits charge amount is not tied to a defined revenue requirement, budget, or estimate of the costs needed to achieve the charge's objective.[85] DCC states that this charge "should be tested against an actual funding requirement and reconciled as collections and program needs become known."[86]

The Commission should approve the community energy benefits charge as described in the Stipulation. As the Commission already found in docket UM 2377, "[a] load of 100 MW or more places unique burdens on the system and thus on other customers that, while difficult to quantify, are nevertheless real."[87] Adopting DCC's proposals would contravene the very purpose of the charge. The charge is designed not to meet a particular revenue requirement or fund a specific program. Rather, it is intended to mitigate and offset the hard-to-quantify but nevertheless real costs that very large data center customers impose on PacifiCorp's system, which increase as data center load increases. Thus, it is appropriate for the amount collected under the charge to increase as data center load increases, rather than for the charge to collect a predetermined, fixed amount.

DCC also recommends that "[i]f the Commission nevertheless retains paragraph 26, it should at minimum require transparent accounting, eligible-expenditure rules, annual reporting, reconciliation to actual program needs, and a mechanism for credits or rate reductions when collections exceed authorized expenditures."[88] These recommendations also wrongly presume that a program budget would first be established before collecting a requisite amount from large LEUFs. In any event, the Commission should find that DCC's concerns can be addressed in a

[85] Objection at 19-20.
[86] Objection at 20.
[87] Docket No. UM 2377, Order No. 26-154 at 13.
[88] Objection at 20.

future docket determining the administration of any generated funds and do not justify rejecting the charge now. Notably, rejecting or redesigning the charge would necessitate reopening the entire Stipulation, an outcome that is unwarranted in view of the Commission's recent adoption of the same change for PGE.[89]

F. A&G and Shared-Cost Surcharge

DCC argues that Paragraph 21.m of the Stipulation is broad and "requires guardrails."[90] Specifically, DCC argues

> PacifiCorp should identify the expense pool included in the calculation, explain why the selected denominator produces a cost-causal allocation, and demonstrate that A&G or other shared costs are not already embedded in OATT rates, project-specific charges, resource arrangements, or another Schedule 401 mechanism. Additions of costs 'folded into base rates' or other shared costs should be accompanied by an explicit credit or reconciliation … Escalation between general rate cases should likewise be reconciled when actual cost-of-service information becomes available.[91]

The Commission should reject DCC's request to add additional "guardrails" on Paragraph 21.m. The Stipulation addresses DCC's concern about identifying the "expense pool" included in the charge by stating that the included expenses will be "PacifiCorp's forecasted administrative and general expense included in the final cost of service study in [PacifiCorp's] most recent general rate case."[92] Additionally, the Stipulation's statement that "charges that get folded into base rates that Schedule 401 LEUFs are eligible for" and "other shared costs the Commission deems appropriate" will also be included is not intended to avoid transparency about costs that are known now.[93] Rather, the purpose of Paragraph 21.m's more generally

[89] Docket No. UM 2377, Order No. 26-154 at 13.
[90] Objection at 20.
[91] Objection at 20-21.
[92] Stipulation ¶ 21.m.
[93] *See* Stipulation ¶ 21.m.

worded terms are to provide flexibility so that if future shared costs change or are added, LEUF Agreements can continue to accurately assign LEUFs their fair share of shared costs.

G. Application to Existing Contracts

DCC approves of certain aspects of how the Stipulation addresses the applicability of Schedule 401 to existing LEUF customers but requests various "clarifications."[94] The Stipulating parties disagree that "clarifications" are necessary. The Stipulation's provisions regarding the applicability of Schedule 401 to existing LEUFs are already detailed and clear, reflect compromises among the Stipulating Parties and the input of other parties in this proceeding, and strike a reasonable balance between not unduly interfering with existing contracts and requiring existing LEUFs to take service under Schedule 401 if continued service to them is likely to cause unreasonable cost shifting to non-LEUF customers.[95] Additionally, the Commission should give DCC's comments about existing LEUFs no weight, because the Stipulation is not opposed by any data center customer with an existing contract for electricity service with PacifiCorp. Given the non-opposition of any data center customer with an existing contract, the Commission should not upset the Stipulating Parties' reasonable compromise set forth in the settlement.

H. Defined Review of Schedule 401

DCC argues that the Commission should "direct PacifiCorp to reevaluate Schedule 401 in its next general rate case or by a date certain" and lists several topics that DCC argues should be included in that review.[96] The Commission should deny this recommendation as unnecessary and inefficient.

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[94] Objection at 21.
[95] *See, e.g.*, Stipulation ¶ 16; *see also* Stipulation ¶ 25 ("Within 60 days of the rate effective date of docket UE 470, PacifiCorp will make a tariff filing to create a new rate class for LEUFs that are not subject to Schedule 401 that assigns the cost of serving such LEUFs to that class consistent with the POWER Act, including net power costs.").
[96] Objection at 22.

DCC's recommendation is unnecessary because the Commission will already have significant visibility into how Schedule 401 is operating from the reporting requirements in the Stipulation and from approving individual LEUF Agreements.[97] Additionally, as with any tariff, the Commission can review Schedule 401 in the future *sua sponte* or upon the request of any party.

DCC's recommendation is also inefficient, because PacifiCorp's next general rate case will likely be filed in 2028 under the rules recently adopted in docket AR 677. Given that it took more than a year of process to reach the current version of Schedule 401, it would be inefficient and wasteful of Commission and stakeholder resources to revisit Schedule 401 so soon after the resolution of this proceeding, barring a specific issue or concern arising in the interim.

I. DCC's Requested Modifications Would Invoke the Stipulation's Withdrawal Provision

DCC states that if the Commission concludes that "material modification cannot be made on the present record or without invoking the Stipulation's withdrawal provisions," the Commission should "provide focused and expedited further proceedings on the disputed terms while preserving the portions of the settlement that are not contested."[98] Contrary to DCC's suggestion, the modifications DCC requests would invoke the Stipulation's withdrawal provision in Paragraph 40 and necessitate reopening the entire settlement. Paragraph 40 provides:

> The Stipulating Parties have negotiated this Stipulation as an integrated document. If the Commission rejects all or any material part of this Stipulation or adds any material condition to any final order that is not consistent with this Stipulation, each Stipulating Party reserves its right, pursuant to OAR 860-001-0350(9), to present evidence and argument on the record in support of the Stipulation or to withdraw from the Stipulation . . . .[99]

[97] Stipulation ¶¶ 19, 30.
[98] Objection at 5.
[99] Stipulation ¶ 40.

The Stipulation is an integrated document, such that each of its terms is appropriate in view of the Stipulation as a whole and the terms work together to ensure fair and reasonable rates for LEUF and non-LEUF customers. The modifications to the settlement requested by DCC would constitute "material" changes within the meaning of the Settlement's withdrawal provision,[100] so it would not be appropriate for the Commission to accept certain parts of the Stipulation while modifying others, as DCC requests. Notably, ADS's comments regarding its non-opposition to the Stipulation state that its non-opposition is conditioned on the Stipulation being adopted without modification.[101] Consistent with the wish of the majority of the parties in this docket, the Commission should decline to modify the Stipulation.

In addition, the Stipulation represents a compromise that the Stipulating Parties reached only after extensive negotiations among all the parties in this proceeding (except NewSun, who intervened at the eleventh hour and did not participate in the settlement negotiations). The fact that only DCC and NewSun object to the settlement shows that it reflects broad support or lack of opposition among the diverse parties in this proceeding. The Stipulating Parties respectfully urge the Commission to avoid upsetting the reasonable and appropriate compromise that the Stipulation represents.

V. RESPONSE TO ADS COMMENTS

ADS filed Comments on the Stipulation stating that ADS does not oppose the Stipulation or request a hearing but addressing three topics. First, ADS stated it is "central" to ADS's non-opposition that the Commission evaluate the Stipulation as a whole.[102] ADS states that Paragraph 15 is particularly "critical to ADS's non-opposition."[103] As discussed above, the

[100] *See* Stipulation ¶ 40.
[101] Amazon Data Services, Inc.'s Comments on Stipulation at 2-3 (Oct. 1, 2026) [*hereinafter* "ADS Comments"].
[102] ADS Comments at 1.
[103] ADS Comments at 3.

Stipulating Parties agree that the Stipulation should be evaluated and treated by the Commission as an integrated whole and should be adopted without modification.

Second, ADS stated that if the Commission proposes to modify the Stipulation, ADS requests the opportunity to supplement the record with evidence and argument.[104] The Stipulating Parties also agree that if the Commission were to propose modifications to the Stipulation, parties may need the opportunity to submit responsive testimony and argument, consistent with OAR 860-001-0350(9). However, the Stipulating Parties disagree with ADS's statement that it would need to offer its full pre-filed testimony into evidence, because this testimony is already in the record and will be offered for admission with all of the other record evidence.

Third, ADS states that it "does not oppose Paragraph 21.a of the Stipulation regarding cost assignment for Network Upgrades," but "notes that nothing in the Stipulation provides PacifiCorp with justification to overbuild resources."[105] The Stipulating Parties disagree that the Commission should "confirm that the Stipulation does not support overbuilding of network resources."[106] As explained in Section IV.C above, Paragraph 21.a does not authorize PacifiCorp to overbuild network resources and has no impact on PacifiCorp's obligation to justify the network resources it builds. Thus, ADS's request for the Commission to "confirm" this is unnecessary.

VI. RESPONSE TO NEWSUN COMMENTS

Despite choosing not to file testimony or participate in the settlement negotiations, NewSun filed comments opposing the Stipulation and arguing "[t]he Stipulation should not be

[104] ADS Comments at 1.
[105] ADS Comments at 2.
[106] ADS Comments at 6.

approved without express safeguards against unreasonable delay, discrimination, and denial of service."[107] Specifically, NewSun raises concerns about Paragraph 33, which restricts resources actively participating in an RFP from concurrently being eligible to support a LEUF, on the grounds that this will make RFPs less competitive and is unfair to developers. But Paragraph 33 is necessary to protect PacifiCorp's non-LEUF customers from having to compete with LEUFs directly for the least-cost, least-risk renewable resources. NewSun also takes issue with Paragraph 32, which establishes requirements governing the interconnection of LEUFs, on the grounds that PacifiCorp retains too much control over LEUF interconnection and therefore that there is a risk of delay or discrimination in the interconnection queue. These concerns are unfounded and adequately addressed by existing protections or by protections adopted by the Stipulation. Finally, NewSun raises other concerns regarding PacifiCorp's exclusive right to serve retail customers in its service territory, docket UM 2410, and its obligation to serve, but these concerns should be disregarded because they are raised on behalf of one or more data center parties who themselves participated fully in this docket and have not raised these concerns.

A. Paragraph 33

Paragraph 33 provides that any resource that is actively participating in a formal system procurement process in any state in PacifiCorp's service territory is ineligible to support a LEUF, but the resource may become eligible to support a LEUF once the resource's participation in the RFP ends.[108] NewSun argues that this provision is not in the public interest because it reduces competition by potentially causing fewer developers to participate in RFPs. NewSun also argues this provision is unfair to RFP bidders because they were not represented in this docket, and

[107] NewSun Energy's Comments at 2 (Oct. 1, 2026).
[108] Stipulation ¶ 33.

because it deprives RFP bidders of the opportunity to participate in RFPs concurrently with negotiating to sell capacity to LEUFs outside of the RFP.

Contrary to NewSun's arguments, Paragraph 33 is in the public interest. While promoting competition may often be in the public interest, it is not the sole criteria in a public interest determination as NewSun appears to argue. In fact, permitting resources to simultaneously negotiate to serve LEUFs outside of the RFP process while participating in RFPs would put PacifiCorp's non-LEUF retail customers in direct competition with LEUFs for cost-effective resources, which is contrary to the public interest and to the purposes of the POWER Act to protect non-LEUF customers from unfair cost increases from LEUFs and to prevent LEUFs from impeding utilities' ability to meet state emissions reduction targets.

While there is no record evidence to support NewSun's assumption that Paragraph 33 would decrease participation in RFPs, any incidental impacts the Stipulation may have on RFP participation must be weighed against the impacts on utilities' ability to procure least-cost, least-risk clean generation for their non-LEUF customers. Paragraph 33 is a reasonable guardrail to prevent LEUFs from acquiring the least-cost, least-risk resources, leaving non-LEUF customers with higher-cost, higher-risk alternatives. It additionally mitigates the uncertainty that would result from not restricting RFP participants from concurrently pursuing negotiations with LEUFs, which could result in bidders dropping out of an RFP to contract with a LEUF, to utility customers' detriment. In testimony, parties disputed whether additional restrictions would be beneficial for customers. Paragraph 33 strikes a fair balance given the uncertainty about how third-party developers will engage with RFPs and LEUFs in the future.

In addition, NewSun appears to misunderstand that although LEUFs have the opportunity to bring their own resources under one of the potential contract structures contemplated by

Schedule 401, this option does not shift responsibility for resource acquisition or emissions reductions to LEUFs, unless the LEUF wants to negotiate a LEUF Agreement that would allow it to do so. Generally, PacifiCorp retains ultimate responsibility for acquiring resources to serve its LEUF customers, and it must do so while not shifting costs or risks to other customers or impeding its progress towards mandated emissions targets. Therefore, the question is not whether a developer should be permitted to bid into an RFP to serve all customers or negotiate directly with a LEUF, but rather whether a developer should be permitted to bid into an RFP and simultaneously negotiate with PacifiCorp to serve a LEUF—a result that would not be in the public interest.

Furthermore, it is reasonable to require developers to choose whether they will participate in an RFP and forego contracting to support a LEUF during the RFP, or whether to stay out of an RFP and contract with a LEUF. Regardless of Paragraph 33, developers may already have to suspend other opportunities to participate in an RFP and risk having to go back to the drawing board if their resource is not selected to move forward. Additionally, developers are not required to participate in RFPs—they may always choose to not participate in an RFP and pursue negotiations directly with LEUFs or other third-parties such as other utilities and wholesale market participants. Developers already must make strategic decisions regarding whether and how to participate in an RFP. Paragraph 33 adds a new dynamic to that decision-making, but it does not unfairly restrict developers' options.

The fact that potential RFP bidders were not represented earlier in this proceeding does not justify rejecting the Stipulation or placing conditions on it, as NewSun suggests.[109] In proceedings before the Commission, it is almost always the case that certain groups not present

[109] NewSun Energy's Comments at 4-5.

in a docket will be impacted by a stipulation, so recognizing this as a basis to reject or significantly modify a stipulation that was entered following nearly a year of process would set a concerning precedent. Here, as NewSun itself acknowledged in its Petition to Intervene,[110] NewSun or other developers could have chosen to intervene in this proceeding at any point, but NewSun chose not to and no other developer has sought to weigh in. The Stipulating Parties and all other parties in this docket engaged in robust settlement negotiations in which diverse stakeholder interests were brought to bear on the discussions and on the Stipulation's terms. The Stipulating Parties and non-opposition parties should not be penalized now for NewSun's failure to intervene sooner.

Finally, the "implementation question[s]" identified by NewSun do not justify rejecting Paragraph 33.[111] Paragraph 33 is sufficiently developed at this stage that it should be adopted now, and any questions that arise as it is implemented in the future can be addressed as needed.

B. Paragraph 32

NewSun also objects to Paragraph 32 on the basis that it "leaves PacifiCorp with unfettered control over which loads advance toward interconnection and when," and suggests that PacifiCorp's ability to decline to initiate a load study conflicts with PacifiCorp's obligation to furnish adequate service under ORS 757.020 and is inconsistent with ORS 757.295.[112] NewSun is incorrect, and its concerns are unfounded. The Stipulation provides for robust Commission regulation of the interconnection queue. The Stipulation specifies that interconnection will happen on a first-come, first-served basis, and PacifiCorp must file any

[110] Petition to Intervene of NewSun Energy LLC at 2 (Sept. 25, 2026).
[111] NewSun Energy's Comments at 5.
[112] NewSun Energy's Comments at 5.

updates to the queue with the Commission and provide justification for any changes.[113] The Commission can also make changes to the queue for good cause.[114]

In addition, imposing deadlines governing PacifiCorp's administration of the study and queue processes as NewSun suggests[115] is not workable and is not necessary. The length of time needed to complete a study is variable based on the specific attributes of the LEUF request, so it is not possible to establish a standard deadline for when the study must be completed. PacifiCorp already performs studies as quickly and efficiently as possible, and it is not in PacifiCorp's interest to delay studies or deny service. Additionally, prospective LEUF customers already have the opportunity to file complaints with the Commission, and as discussed, PacifiCorp must explain to the Commission if a LEUF is not interconnected on a first-come, first-served basis.[116] These protections are adequate and appropriate—as evidenced by the fact that no LEUF customers raise concerns regarding the Stipulation related to PacifiCorp's interconnection study process—so NewSun's additional recommendations should all be rejected as unnecessary.

VII. CONCLUSION

For the reasons explained above, as well as for the reasons discussed in the Stipulating Parties' Joint Testimony, the Stipulating Parties respectfully urge the Commission to adopt the Stipulation without modification. The Stipulation appropriately implements the POWER Act for PacifiCorp and strikes a balance between maximally protecting PacifiCorp's non-LEUF customers while being fair to LEUF customers and providing them flexibility to meet their service needs. The Stipulation is also the product of careful and detailed negotiations among all parties to this docket and is a compromise of the Stipulating Parties' varying positions on the

[113] Stipulation ¶ 32.
[114] Stipulation ¶ 32.
[115] NewSun Energy's Comments at 6.
[116] Stipulation ¶ 32.

multiple issues raised in this proceeding. Therefore, the Commission should find that Stipulation is in the public interest and will result in just and reasonable rates for all of PacifiCorp's customers.

DATED this 16th day of October, 2026.

Respectfully submitted,

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