

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2410

AMAZON DATA SERVICES, INC.,

Complainant

vs.

PACIFICORP, dba PACIFIC POWER,

Defendant.

RULING

DISPOSITION: PARTIAL MOTION TO DISMISS DENIED

**I. INTRODUCTION**

PacifiCorp, dba Pacific Power, seeks to dismiss one claim of relief sought in a complaint filed against it by Amazon Data Services (ADS). In its sixth claim, ADS seeks a Commission order removing PacifiCorp’s exclusive right to serve territories in which ADS facilities are located due to PacifiCorp’s alleged failure to provide adequate service. PacifiCorp moves to dismiss that claim, arguing that there is no statutory basis for the Commission to provide the requested relief.

For reasons explained below, I find that PacifiCorp has failed to establish that ADS’s sixth claim has no legal basis and deny its partial motion to dismiss.

**II. BACKGROUND**

On October 30, 2025, ADS filed a complaint against PacifiCorp. The complaint includes six claims for relief that generally allege PacifiCorp has failed to provide service to four new ADS data center campuses located in PacifiCorp’s exclusive service territory. ADS’s sixth claim alleges that PacifiCorp is “unable or unwilling” to provide adequate service to its facilities and asks the Commission modify PacifiCorp’s exclusive service territory and allow it to be served by a different utility.

On December 19, 2025, PacifiCorp filed a partial motion to dismiss ADS’s sixth claim. PacifiCorp contends that there is no legal basis for the Commission to remove portions of allocated service territory. PacifiCorp maintains that exclusive service territory, once

allocated by the Commission, can only be modified with the agreement of the affected utility.

On January 30, 2026, ADS filed an answer to PacifiCorp's partial motion to dismiss. ADS contends the Commission should deny PacifiCorp's request because the territory allocation laws and the Commission's broad powers include the ability to modify an allocation of service territory.

On February 13, 2026, PacifiCorp filed a reply in support of its partial motion to dismiss. PacifiCorp again argues that ADS has failed to establish any basis for the Commission to reallocate service territory over a utility's objection.

### **III. DISCUSSION**

The Commission's administrative rules, in conjunction with the Oregon Rules of Civil Procedure (ORCP), govern practice and procedure before the agency.<sup>1</sup> ORCP 21 A(1)(h) allows a defendant to seek dismissal for failing to state ultimate facts sufficient to constitute a claim. For the purpose of considering a motion to dismiss, all factual allegations are assumed to be true and construed in a light most favorable to the non-moving party.<sup>2</sup> The Commission must "determine whether the allegations \* \* \*, taken together with any reasonable inferences drawn from those allegations, state a claim as a matter of law."<sup>3</sup>

As relevant here, ADS's complaint provides:

Complainant's Sixth Claim for Relief  
(In the Alternative, Removal of Exclusive Service Territory)

98. ADS incorporates the allegations above.
99. The Territory Allocation Law provides for the Commission to investigate the allocation of a service territory and to assign or transfer an allocated service territory when such transfer is not contrary to the public interest. ORS 758.455-ORS 758.460. This Commission's general authority "to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power

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<sup>1</sup> See OAR 860-001-0000(1).

<sup>2</sup> *PGE v. Dayton Solar I LLC, et al.*, Docket No. UM 2151, Order No. 21-210 at 3 (June 25, 2021).

<sup>3</sup> *Levasseur v. Armon*, 240 Or App 250, 254 (2010).

and jurisdiction,” ORS 758.040(2), further provides the Commission with authority to regulate exclusive service territories held by public utilities under its jurisdiction. And ORS 756.568 provides this Commission with the power to rescind, suspend or amend any Commission order.

100. It is not in the public interest for a utility’s exclusive service territory to include a customer that the utility is unable or unwilling to serve.
101. The Commission should find that PacifiCorp has failed to perform its contractual obligations and has proven unable or unwilling to provide adequate service to the Data Center Campuses within its exclusive service territory.
102. The Commission should thus remove the Data Center Campuses from PacifiCorp’s exclusive service territory.<sup>4</sup>

I agree with PacifiCorp that ADS has failed to state a claim for relief under ORS Chapter 758, which sets forth Oregon’s framework for the allocation of service territories. As both parties recognize, those statutes allow the Commission to set service boundaries in one of two ways—by a contract between utilities proposing to allocate territory and customers under ORS 758.410, or at the request of a utility to be designated as the exclusive provider in unallocated area under ORS 758.435.<sup>5</sup> Because the territory in question is currently allocated to PacifiCorp, and because PacifiCorp does not consent to a modification of that territory, ORS Chapter 758 does not provide a basis to support the relief ADS requests.

I cannot conclude, however, that the Commission is without authority to act if a utility is unable or unwilling to serve a customer within its allocated territory. Courts have recognized the breadth of Commission authority, “—commensurate with that of the legislature itself—for the exercise of [its] regulatory function.”<sup>6</sup> ORS 756.040(1) expressly assigns the Commission with representing utility customers and the public generally “in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction,” and to “make use of the jurisdiction and powers to protect such customers, and the public generally, from unjust and unreasonable

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<sup>4</sup> ADS’s Complaint at 21 (Oct 30, 2025).

<sup>5</sup> ORS 758.400(1) defines “Allocated territory” as “an area with boundaries established by a contract between persons furnishing a similar utility service and approved by the Public Utility Commission or established by an order of the commission approving an application for the allocation of territory.”

<sup>6</sup> *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or App 200, 214, 534 P2d 984, *rev den* (1975).

exactions and practices and to obtain for them adequate service at fair and reasonable rates.”

Courts have also recognized that the Commission’s broad authority includes implied powers beyond those specified in statute if necessary to represent and protect customers and the public generally. In *Gearhart v. PUC*, 356 Or 216 (2014), the Oregon Supreme Court upheld the Commission’s conclusion that it had the authority to order a utility to issue refunds to remedy a legal error the Commission made when setting rates. In the underlying decision, the Commission acknowledged that no statute provided such refund authority, and that the general prohibition against retroactive ratemaking would seem to preclude the examination of prior rates. Nonetheless, the Commission concluded that its duty and obligation to protect ratepayers provided the implied authority to correct a legal error by ordering refunds:

Without the power to order a utility to issue refunds for the imposition of unjust and unreasonable rates, the Commission’s ability to protect customers would be seriously impaired. To interpret the general grant of authority to mean that the Commission may only protect customers prospectively would be inconsistent with the plain language of the statute.<sup>7</sup>

I reach the same conclusion here. The legislature has assigned the Commission with the express duty to protect customers and the public generally from unjust practices and to obtain for them, among other things, adequate utility service. To fulfill this duty, the legislature has given the Commission the power to do all things necessary and convenient in the exercise of that authority. Just as the Commission previously held, to interpret the Commission’s general grant of authority as narrowly as PacifiCorp argues “would be inconsistent with the plain language of the statute.”<sup>8</sup> Moreover, a liberal construction of such powers and duties under ORS 756.160 to promote “the public welfare, efficient facilities and substantial justice” supports the Commission’s implied authority to take actions necessary to ensure the provision of adequate utility service when the assigned utility is unwilling or unable to serve.

This is not to say that the Commission’s implied authority to act is unbounded. Such authority should be only exercised in the absence of other regulatory tools provided by express authority and be consistent with the Commission’s need to balance competing

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<sup>7</sup> *In the Matters of The Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement (DR 10) Revised Tariffs Schedules for Electric Service in Oregon Filed by Portland General Electric Company (UE 88) Portland General Electric Company’s Application for an Accounting Order and for Order Approving Tariff Sheets Implementing Rate Reduction (UM 989)*, Order No. 08-487 at 30-31 (Sept. 30, 2008).

<sup>8</sup> *Id.*

and often conflicting goals and interests, including the private rights of regulated utilities.<sup>9</sup> But accepting as true—for purposes of evaluating the pending partial motion to dismiss—the allegation that a utility is unwilling or unable to provide the needed utility service, I find those assumed facts sufficient to support Commission action as necessary to protect customers and the public generally.

I note that the legislature provided the Commission with a means to revisit earlier decisions to allocate territory. Under ORS 756.568, the Commission may, at any time and after notice, “rescind, suspend or amend any order made by the commission,” which would include the Commission’s prior order designating as PacifiCorp’s service territory the land on which the ADS’s data centers identified in the complaint are located. Although the legislature provided no express provision addressing the modification of service territories, the legislature, in ORS 756.040 and ORS 756.568, “set out the results that the legislature wants the PUC to achieve and then leave it to the PUC to determine both what the results that the legislature described mean in practice and how to achieve those results.”<sup>10</sup>

I am not persuaded by PacifiCorp’s arguments that the Commission cannot look beyond the provisions of ORS Chapter 758 to resolve issues related to territory allocations. First, PacifiCorp’s reliance on *In re Prop. Owners of Tax Lot 501*; Docket No. UA 110, Order No. 07-415 (Sept. 21, 2007) is misplaced, as that case focused on the limits of ORS Chapter 758 and not the Commission’s general powers and duties. Second, I agree that when two statutes conflict the more specific provision generally takes precedence, but as ADS points out there is no conflict here between the territory allocation laws and the Commission’s general powers. Nothing in ORS Chapter 758 limits the Commission’s ability to take action to ensure those who seek service within a designated territory obtain it. Moreover, to hold that the Commission is without power to address allegations that a utility is unwilling or unable to provide service within its designated service territory would be inconsistent with the purpose of the allocation laws to ensure utilities provide “adequate and reasonable services to all territories and customers affected.”<sup>11</sup>

This interpretation also does not, as PacifiCorp contends, disrupt the regulatory compact underlying utility regulation. As PacifiCorp explains, the regulatory compact grants utilities the exclusive right to provide service in their allocated service territories and, in exchange, “are obligated to provide safe, reliable, and nondiscriminatory utility service within their service territories \* \* \*.”<sup>12</sup> But my interpretation here is based on the assumption that a utility has already compromised the regulatory compact by failing or

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Gearheart v. PUC*, 255 Or App 58, 85 (2013), *aff’d* *Gearhart v. PUC*, 356 Or 216 (2014).

<sup>11</sup> ORS 758.405.

<sup>12</sup> PacifiCorp’s Partial Motion to Dismiss at 12 (Dec. 19, 2025).

refusing to provide service in its territory. PacifiCorp strongly disputes that it is unwilling or unable to serve the data center campuses, and ADS will carry the burden to prove that allegation in this proceeding. But assuming such factual circumstances to be true—as is required for evaluating a motion to dismiss—the Commission has the duty under ORS 756.040 to protect customers and the public generally and do all things necessary to obtain adequate utility service for them.

#### **IV. RULING**

PacifiCorp's partial motion for summary judgment is denied.

Dated February 19, 2026



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Michael Grant  
Administrative Law Judge