

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 399

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

**REBUTTAL TESTIMONY OF
SPENCER GRAY**

**ON BEHALF OF THE
NORTHWEST AND INTERMOUNTAIN
POWER PRODUCERS COALITION**

August 11, 2022

1 **I. INTRODUCTION**

2 **Q. Please state your name, business address, and present position with**
3 **Northwest & Intermountain Power Producers Coalition.**

4 **A.** My name is Spencer Gray. I am employed by the Northwest & Intermountain
5 Power Producers Coalition (“NIPPC”) as Executive Director. My business
6 address is P.O. Box 504, Mercer Island, WA 98040. I have been in my current
7 position since early 2020.

8 **Q. Are you the same Spencer Gray that previously submitted opening testimony**
9 **on behalf of the Northwest & Intermountain Power Producers Coalition?**

10 **A.** Yes.

11 **Q. What is the purpose of the testimony you are filing today?**

12 **A.** My testimony replies to some of the positions and explanations included in
13 PacifiCorp Witness McVee’s reply testimony¹ related to PacifiCorp’s proposed
14 voluntary renewable energy tariff (“VRET”) program, which PacifiCorp
15 designates as its “Accelerated Commitment Tariff” program or the “ACT”
16 program.

17 **II. TESTIMONY**

18 **A. Summary**

19 **Q. Please summarize your testimony with respect to PacifiCorp’s ACT**
20 **program.**

21 **A.** I offer the following responses to PacifiCorp’s reply testimony and reiterate
22 NIPPC’s positions regarding PacifiCorp’s ACT program.

23 (a) **Restrict Purchase of Unbundled RECS.** PacifiCorp’s program should be
24 modified to ensure all power for the program is from eligible identified

¹ Reply Testimony of Matthew McVee, PAC/1700.

1 renewable sources, without the need to purchase unbundled RECs, outside
2 of true emergency or force majeure situations. I respond to PacifiCorp
3 testimony suggesting that its proposal regarding use of unbundled RECS is
4 similar to treatment of unbundled RECS in PGE's VRET program and
5 describe why they are fundamentally different.

6 (b) **Program Caps/Customer Supplied PPA Option**. I reiterate my support
7 that PacifiCorp's ACT program should be capped at 175 aMW at this time
8 for utility-supplied generation, consistent with PacifiCorp's proposal, and
9 recommend that PacifiCorp be required to offer the opportunity for
10 sophisticated customers to "bring their own" PPA, subject to a separate
11 capacity cap. I also respond to, and disagree with, PacifiCorp's testimony
12 suggesting that the complexities of its system and potential
13 interconnection costs make a customer-supplied PPA option unworkable.

14 (c) **Competitive Bidding Rules**. I support PacifiCorp's acknowledgement
15 that the Commission's competitive bidding rules are applicable to its
16 ACT program, and provide a further explanation of NIPPC's position that
17 PacifiCorp must seek a waiver of the competitive bidding rules for its
18 first tranche of ACT capacity. NIPPC does not object to grant of a waiver
19 that would allow PacifiCorp to use its most recent RFP results for its
20 current ACT proposal to the extent acquisition of such capacity will be
21 relatively proximate in time, but a before-the-fact, open-ended waiver is
22 not appropriate.

1 (d) **Utility Ownership of VRET Resource.** Any approval of PacifiCorp's
2 program should reiterate strict compliance with VRET Condition 7.
3 PacifiCorp agrees that it will not seek to acquire ownership of a VRET
4 resource without prior Commission approval. However, I disagree with,
5 and respond to, some of PacifiCorp's testimony on the applicability of
6 VRET Condition 7 requirements in general.

7 (e) **Clarification of Credit Calculation:** I reiterate the position that
8 PacifiCorp's ACT program tariff should make it clear that application of
9 any energy and capacity credit will not result in a net reduction of costs
10 to ACT program participants below the costs borne by general system
11 customers. PacifiCorp appears to agree with this position, and it should
12 be required to make this clear in its tariff.

13 (f) **Eligibility of ACT service for Direct Access Customers.** I reiterate my
14 position that PacifiCorp's tariff should be clarified to remove the
15 prohibition on a customer participating in both PacifiCorp's direct
16 access program and the ACT program, and respond to PacifiCorp's
17 proposal to clarify its tariff on this issue.

18 (g) **Thresholds.** The eligibility threshold for PacifiCorp's ACT service
19 should be equal to the threshold for its long-term Direct Access
20 program. PacifiCorp's testimony that it offers small customers the
21 opportunity to take direct access on a year-to-year basis (as opposed to a
22 permanent opt-out) is not sufficient.

1 **B. Restrict Purchase of Unbundled RECS.**

2 **Q. What is your concern with respect to PacifiCorp’s proposed use of**
3 **unbundled RECs?**

4
5 **A. As noted in my opening testimony, OPUC VRET Condition 2 clearly mandates**
6 that:

7 “Voluntary renewable energy options *only include*
8 *bundled REC products*. Any RECS associated with
9 serving participants must be retired on or on behalf of
10 participants.”

11 Emphasis supplied. Consistent with this requirement, PacifiCorp describes its program as
12 one in which PacifiCorp will provide a participant with bundled renewable electricity.²
13 However, the conditions of service included in PacifiCorp’s proposed Schedule 273,
14 section 4(a), contemplates the long term and continued use of unbundled RECS to
15 support its program. That section states that

16 “The amount of renewable energy to be acquired on behalf of the
17 Customer annually. This amount shall not exceed the reasonably
18 projected annual amount of energy to be consumed by the Customer. In
19 the event of yearly under generation from the renewable energy
20 resource(s) facilitated through the contract, *the Company will purchase*
21 *renewable energy certificates (RECs) on the Customer’s behalf to*
22 *ensure the Customer’s subscribed quantity of energy is covered.*”

23
24 Exhibit PAC/801, Anderson/2 (emphasis added). This tariff language is inconsistent
25 with VRET Condition 2 and provides PacifiCorp and potential ACT program customers
26 too much leeway (and possibly even an incentive) to undersize the “reasonably projected
27 annual amount of energy to be consumed by the customer,” knowing they can simply
28 rely on unbundled RECs to make up any shortfall.

29 **Q. How did PacifiCorp respond to this concern?**

² See, e.g., PAC/800, Anderson/4, lines 17-18

1 **A.** PacifiCorp responded to this concern by stating that unbundled RECS “are a
2 necessary component of a VRET” program,”³ and disputes my statement that
3 PGE’s GEAR program did not allow for use of unbundled RECs,⁴ contending that
4 PacifiCorp’s proposed language is “nearly identical” to that used for PGE’s
5 GEAR.

6 **Q.** **Do you agree with PacifiCorp’s comments?**

7 **A.** No, I do not, for a variety of reasons. First, unbundled RECS are *not* a necessary
8 part of a VRET program. In fact, they are directly prohibited by VRET
9 Condition 2. There is nothing about the nature of a VRET that would require
10 using unbundled RECs. For example, PacifiCorp can simply ensure a renewable
11 energy facility is sized such that use of unbundled RECS is unnecessary.
12 Allowing ongoing use of unbundled RECS should not be allowed.

13 Second, while Mr. McVee is correct that PGE’s GEAR program allows for
14 purchase of unbundled RECs “in the event of a yearly under-generation from the
15 renewable energy resource,” the tariff governing PGE’s program further specifies
16 that, in such circumstance, “PGE shall make reasonable efforts to procure a new
17 resource on behalf of the Subscribing Customer as soon as practicable with the
18 cost of the renewable energy to the Subscribing Customer revised accordingly.”⁵
19 Thus, as I understand PGE’s program, any shortfall in new renewable generating
20 capacity will be remedied by acquisition of an additional new renewable resource

³ PAC/1700, McVee 21, lines 4-9.

⁴ PAC/1700, McVee 21, lines 4-9.

⁵ PAC/1700,, McVee/21, citing PGE’s Schedule 55, 8 Large Nonresidential Green Energy Affinity Rider (GEAR), general provision 3.

1 as required by Condition 2. By contrast, PacifiCorp’s proposal would allow it to
2 rely on unbundled RECS to meet program needs for the duration of the
3 underlying agreement, which is not consistent with Condition 2 and should be
4 rejected.

5 **Q. What would you propose to resolve your concern with PacifiCorp’s**
6 **proposal?**

7 **A.** I would support PacifiCorp including the same tariff language as is used in PGE’s
8 Schedule 55, general provision 3. Including this language, and applying it as I
9 have expressed my understanding of PGE’s Schedule 55 discussed above, would
10 resolve NIPPC’s concerns and would allow PacifiCorp to maintain the flexibility
11 needed to administer this program.

12 **C. Program Caps and Customer-Supplied Option Alternative.**

13 **Q. Please explain your position with respect to PacifiCorp’s proposed 175 aMW**
14 **program cap and the Customer-Supplied PPA Option Alternative.**

15 **A.** As stated in my initial testimony, NIPPC supports PacifiCorp’s proposal to limit
16 its ACT program to 175 aMW for any utility-selected PPAs, and does not see a
17 need to expand such cap at this time. Also as stated in my initial testimony,
18 NIPPC supports requiring PacifiCorp to include a “customer-supplied PPA”
19 option (a “CSO”) similar to the approach adopted by PGE, and does not oppose a
20 separate, independent cap for the customer-supplied PPA option.

21 **Q. Does PacifiCorp support inclusion of a CSO in its program?**

22 **A.** No. While PacifiCorp states that it is “open to continued discussions and
23 potentially allowing for a case-by-case analysis of a CSO,”⁶, it opposes adoption

⁶ PAC/1700, McVee/6.

1 of the requirement at this time, arguing that “[o]n PacifiCorp’s system, allowing
2 the customer to choose the location of interconnection could lead to significant
3 costs for network upgrades.”⁷

4 **Q. Do you agree with this rationale?**

5 **A.** No, I do not. First, a case-by-case analysis rather than a required CSO program
6 with guidelines leaves potential customers and suppliers without clear guidance
7 on how they should approach PacifiCorp with their proposal. It also affords the
8 incumbent electric company too much discretion about what constitutes the
9 necessary analysis, leaving the possibility that the company may reject any
10 application in spite of the merits. PacifiCorp should be required to have a CSO
11 with clear guidelines in its program to allow customers to choose the supplier who
12 best fits their needs and goals. Second, while I appreciate that different renewable
13 generation sites may have advantages and/or disadvantages related to network
14 upgrade costs, that fact does not justify refusal to adopt a customer supply option
15 alternative. It is to a supplier’s advantage to find a renewable generation site with
16 low network upgrade costs as it will make their pricing more attractive to a
17 customer. The CSO option would contain the same price pressures as the utility
18 supplied option when it comes to suppliers trying to build the most cost-effective
19 projects to offer, including finding least-cost network upgrade interconnection
20 sites. Concerns about network upgrade costs are tempered by market forces, and,
21 therefore, there is no reason to take the CSO option off the table in this program.

22 **D. Utility Ownership of VRET Resources.**

⁷ PAC/1700, McVee/6.

1 **Q. Please explain your concern with PacifiCorp’s proposal related to using**
2 **company-owned resources to serve its ACT program.**

3 **A.** As expressed in my initial testimony, NIPPC does not generally believe it is
4 appropriate for a utility to own a VRET resource. As I explained, as a general
5 matter, a utility’s ability to own a VRET resource, even if such resource is not
6 included in rate base, provides an incentive for the utility to favor its own projects
7 over third party alternatives. A utility-owned asset that is not included in rate base
8 is conceptually identical to a project owned by an undifferentiated affiliate of the
9 utility. The Commission’s statutory responsibility is to design policies to mitigate
10 the vertical and horizontal market power of incumbent electric companies and
11 prohibit preferential treatment, or even the appearance of such treatment, by the
12 utility toward generation or market affiliates.⁸ Allowing a utility to self-select its
13 own project – even if not in rate base – is contrary to this mandate. I also
14 expressed concern that PacifiCorp appeared to be trying to reserve to itself the
15 opportunity to explain away the specific conditions imposed on a utility
16 ownership of a VRET should it so desire.

17 **Q. How did PacifiCorp respond to your concerns?**

18 **A.** PacifiCorp responded in a variety of ways. First, PacifiCorp clarified its position
19 and agreed that “PacifiCorp will bring a proposal of specific safeguards before the
20 Commission for consideration before investing in any owned resource for the
21 ACT program. Accordingly, these arguments should not prevent approval of the
22 ACT.”⁹ This commitment by PacifiCorp mitigates the bulk of NIPPC concerns.

⁸ See ORS 757.646 (1).

⁹ Pac/1700, McVee/15.

1 However, PacifiCorp went on to address the issue with statements with which I do
2 not agree. Specifically, PacifiCorp argues that NIPPC’s concerns with that utility-
3 ownership creates an incentive for the utility to favor its own projects over third-
4 party alternatives “is flawed because the requirement to follow the Commission’s
5 competitive bidding rules mitigates against this concern.”

6 **Q. Do you agree that the Commission’s competitive bidding rules mitigates**
7 **against this concern about utility ownership?**
8

9 **A.** No, I do not, for a variety of reasons. First, the competitive bidding rules only
10 apply to large projects, and provide no protection for projects of a smaller scale.
11 Given that PacifiCorp proposes to offer this service to customers with loads as
12 small as 30kW, the competitive bidding rules may not offer any protection at all.
13 Second, even with the protections of the competitive bidding rules in place,
14 utilities remain incented overall to favor their own projects, and the rules are not a
15 failsafe against undue utility bias.

16 **Q. Did PacifiCorp offer any other support for its desire to maintain the option**
17 **for utility ownership of a VRET?**

18 **A.** Yes. PacifiCorp also responds to my testimony and that filed by the Citizens
19 Utility Board (“**CUB**”) by arguing that the requirement embedded in Design
20 Condition 7 requiring utility to share a portion of the return earned on a utility-
21 owned resource is not justified. I disagree. As stated above, I do not believe utility
22 ownership of a VRET is generally appropriate, but I appreciate that the
23 Commission has considered this issue in prior dockets and allowed for utility
24 ownership subject to the terms of Condition 7, including the requirement to share

1 its return on equity from a utility-owned VRET project.¹⁰ PacifiCorp’s comments
2 in this regard amount to a collateral critique on the Commission prior order, and
3 should be given no weight here.

4 **E. Clarification of Credit Calculation**

5 **Q. Please explain your position with respect to calculations of the energy and**
6 **capacity credit.**

7 **A.** I do not believe it to be appropriate for the energy and capacity credit to exceed
8 the PPA price in a manner that results in a net reduction of costs to participants
9 below the costs borne by general system customers.

10 **Q. Has PacifiCorp’s agreed to limit its proposal to ensure that energy and**
11 **capacity credits will not exceed the PPA price in a manner that results in a**
12 **net reduction of costs to participants below the costs borne by general system**
13 **customers?**

14 **A.** Yes. PacifiCorp’s stated in its reply testimony that “PacifiCorp has no objection
15 to modifying Schedule 273 to make this more explicit,”¹¹ although it went on to
16 question whether such action is necessary.

17 **Q. Do you believe it is necessary to modifying Schedule 273 to explicitly limit the**
18 **capacity and energy credit as discussed?**

19 **A.** Yes, clarification in the tariff itself remains necessary. This is a fundamental
20 feature of the program, and should be set forth clearly in the tariff. Prospective
21 customers should not be left having to guess whether or not the program is

¹⁰ VRET Condition 7 specifies that “The regulated utility may own a voluntary renewable energy resource, but may not include any voluntary renewable energy resource in its general rate base. It may recover a return on and return of its investment in the voluntary renewable energy resource from the subscriber; however, the utility must share some of the return on investment with the other utility customers for ratepayer-funded assets used to assist the voluntary renewable offering.”

¹¹ PAC/1700, McVee/10.

1 configured in a manner that allows total costs to the customer to fall below the
2 general system rate, or to rely on historic knowledge of statements made in
3 dockets such as this that may predate their interest in the program.

4 **F. Eligibility for Customers to Participate in Both the Direct Access**
5 **Program and the ACT Program.**

6 **Q. Please describe your concern with respect to eligibility of ACT service for**
7 **Direct Access Customers.**

8 **A.** As noted in my initial testimony, PacifiCorp’s proposed ACT Tariff contains a
9 provision that discriminates against Direct Access customers by stating that
10 “Customers that subscribe under PacifiCorp’s Direct Access Delivery Service are
11 not eligible to participate in the ACT program.” The fact that a given customer
12 takes Direct Access for a portion of its load should not be a rationale for
13 preventing that customer from purchasing ACT program service for another
14 portion of its load.

15 **Q. Did PacifiCorp respond to your concern?**

16 **A.** Yes. PacifiCorp acknowledged this concern, and stated that “if Mr. Gray is simply
17 concerned that participation in direct access for certain loads forecloses all of a
18 customer’s load (both loads on direct access and loads on cost-of-service rates)
19 PacifiCorp would clarify that any cost-of-service customer may seek to participate
20 in the ACT program for its cost-of-service loads.”¹²

21 **Q. Does PacifiCorp’s proposed clarification resolve your concern?**

22 **A.** I interpret PacifiCorp’s proposal as an agreement that it will change its proposed
23 ACT program tariff to make it clear that a customer may participate in both the

¹² PAC/1700, McVee/22-23.

1 ACT program with respect to its cost of service loads and also participate in the
2 direct access program for a portion of its service. If that is accurate, then it
3 ameliorates my concern. However, it must be clear that the flexibility to use both
4 services works in either direction. *I.e.*, PacifiCorp’s testimony clearly indicates
5 that a direct access customer is not foreclosed from seeking to participate in the
6 ACT program, but the reverse must be true as well: A customer taking service
7 from the ACT program must not be foreclosed or penalized for seeking to
8 participate in the direct access program.

9 **G. Thresholds for Service.**

10 **Q. Please describe your concern with respect to the minimum threshold to**
11 **participate in the ACT Program.**

12 **A.** As stated in my initial testimony, the eligibility threshold for PacifiCorp’s ACT
13 service should be equal to the threshold for its long-term Direct Access program.

14 **Q. How does PacifiCorp respond to your position on eligibility thresholds?**

15 **A.** PacifiCorp replied to my testimony by noting that it does offer direct access
16 programs for small businesses with lower eligibility thresholds, but, as PacifiCorp
17 clearly recognizes in its testimony, my position is focused on PacifiCorp’s long
18 term direct access program, not its short-term, year to year programs available to
19 smaller customers.¹³ With respect to the long-term program, PacifiCorp indicates
20 that the program “was limited to large, sophisticated customers. Accordingly,
21 there is no basis for his assertion that

¹³ PAC/1700, McVee/23, line17- McVee/24, line 1.

1 the Commission should limit participation in the ACT program because there are
2 still direct access options for non-residential customers exceeding 30 kW of
3 demand.”¹⁴

4 **Q. Do you agree with PacifiCorp’s response?**

5 **A.** No, I do not. The fact that PacifiCorp offers a short term, year to year direct
6 access programs eligible to small customers is not a reasonable substitution for
7 the opportunity to take direct access on a long-term basis in competition with
8 utility offerings. Long term direct access and PacifiCorp’s ACT program are
9 directly competing services for some customers. Both programs require a level of
10 sophistication to make a long-term commitment to purchase renewable energy,
11 and both should be equally available to all prospective customers. In fact, a
12 decision to purchase power pursuant to direct access can be substantially less
13 complicated than a decision to lock into a long term agreement for a new
14 renewable power facility as part of the ACT program, with all of the costs and
15 risks involved.

16 PacifiCorp is essentially proposing to carve out a substantial portion of the
17 potential market for commercial customers interested in purchasing renewable
18 energy – the entire market for customers between 30kW and 2 MW – that can be
19 served only by the utility and is ineligible to receive service through long-term
20 direct access. This creates an entire class of customers eligible to purchase
21 renewable power from PacifiCorp, but not eligible to purchase renewable power

¹⁴ PAC/1700, McVee/24, lns 1-4.

1 through the Direct Access program. This is a clear barrier to competition that does
2 not appear to serve a valid purpose, and should not be permitted.

3 **III. CONCLUSION**

4 **Q. Does this conclude your testimony?**

5 **A.** Yes.