

POWER ACT IMPLEMENTATION: COMPARING APPROACHES IN PGE AND PACIFICORP TERRITORY

Governor Kotek signed HB 3546, the POWER Act, into law June 16, 2025. Implementation began immediately, utilizing an existing contested case docket for Portland General Electric (UM 2377) investigating the impacts of new, large customers in the utility’s service territory. The Commission issued its [Order](#) in that docket on May 7, 2026, and [resolved motions](#) for reconsideration on August 31, 2026.

PacifiCorp began its implementation process at the end of 2025, filing a modestly detailed proposal obligating new data centers to sign individualized contracts through which PacifiCorp and data centers would negotiate the costs of service. PacifiCorp’s originally filing simply stated that the contracts would contain terms that met the exact language of the POWER Act, but did not include details indicating how that would be done. The Commission instituted a contested case proceeding to which several parties intervened. PacifiCorp, Commission Staff, the Citizen Utility Board, and a group of Environmental Intervenors represented by the Green Energy Institute at Lewis & Clark Law School reached a [settlement resolving all issues in the case](#), filed on September 16, 2026. The terms of the settlement implement the POWER Act in a vastly different manner from the policies adopted for PGE. This comparison explains the differences and similarities between the approaches in the two utility territories.

1. Applicability

The POWER Act applies to “large energy use facilities,” generally defined as data centers 20 MWs and larger. That threshold is applicable in both territories. References to data centers below will implicitly mean data centers with a capacity of 20 MW or greater.

The PacifiCorp Stipulation applies only to “new” data centers, which is defined as 1) data centers that enter into a contract for service after June 16, 2025, and 2) data centers that enter into a contract for service before June 16, 2025, but cause PacifiCorp to incur more than \$10 million in cumulative costs for generation, transmission, and distribution, not including repairs and maintenance or costs that are paid for upfront. PacifiCorp will open a separate docket at the conclusion of its separately filed rate case (UE 470) to address existing data centers. PGE’s tariff (Schedule 96), by contrast, applies to all data centers, existing and new.

The reason for the different applicability is rooted in the cost-allocation approach for each utility, described below. PGE is utilizing a tariffed rate, with updates to its cost-allocation methodology and other rule changes to protect against cost-shifting. Tariff terms are always subject to change, meaning the changes resulting from PGE’s case can be applied to both existing and new data centers. PacifiCorp’s approach will be effectuated through each customer’s service contract, rather than through the data center class’s tariff. The individual costs of service will be directly assigned in the service contract. Existing customers already have service contracts, and the POWER Act cannot (and does not) require those contracts to be renegotiated. As such,

PacifiCorp's approach will not apply to existing customers. A separate, tariff-based approach will need to be adopted for those customers.

Each approach is appropriate given the unique characteristics of PGE's and PacifiCorp's data center loads. PGE already has a relatively large profile of existing data centers, so failing to adopt an approach that applied to existing customers would insufficiently protect PGE's other customers. The value of applying the rules to PGE's existing data centers was made apparent when UM 2377 finished, resulting in a nearly 30% increase in rates for existing data centers and a rate decrease for nearly all other rate classes. PacifiCorp, on the other hand, does not have as extensive a network of existing data centers, so the relative value of an existing-customer-focused approach was lower than in PGE's implementation docket. Additionally, for reasons described below, a direct assignment approach utilizing customer service contracts is more appropriate in PacifiCorp's territory, whereas a tariff approach is likely more appropriate for data centers in PGE's territory.

2. Approach to cost-allocation

The PacifiCorp Stipulation directly assigns a data center's cost of service to the data center. Distribution, smaller transmission, and larger transmission largely needed to serve a single facility must be paid for up front and in full. Larger transmission for which a data center makes up less than 80 percent of the need and generation infrastructure will be assigned to the customer in proportion to its share of the need for the resource. The data center must pay for the full amount of their proportionate share during the initial term of its service contract. Some other costs are paid for using a more traditional allocation methodology based on the data center's demand, including the use of PacifiCorp's existing transmission system and administrative costs. Importantly, for most generation, transmission, and distribution, a data center will not be charged based on a rate found in a tariff applicable to the entire data center class. Instead, it will be charged based on the individual costs it imposes on PacifiCorp. To oversimplify a bit, imagine a data center will impose \$120 million in generation costs, and signs a 10-year contract. The data center will be assigned those costs over the course of the contract resulting in a bill of \$12 million a year or \$1 million a month.

PGE, on the other hand, utilizes tariff rates applicable to the data center class. The Commission approved a new method of allocating costs, the Peak Growth Modifier (PGM), because the existing cost-allocation methodology was poorly designed to allocate costs if PGE experienced a large level of growth from a single rate class, as it expects from the new data center class over the next decade. The PGM allocates costs based on each class's capacity growth rather than its peak capacity. A similar approach was adopted for market purchase costs. Importantly, costs are assigned at the class level rather than to individual customers (with some exceptions) and customers pay a stated rate based on their demand. Thus, the PGE framework is designed to assign more costs to the data center class, as opposed to the PacifiCorp framework which is designed to assign costs to individual data center customers.

Although these two policy constructs differ substantially, both can be effective at achieving the POWER Act's core mandate to protect non-data center customers from costs and risks that data centers impose. PGE's territory is dense with many, relatively smaller data centers clustering in

the Hillsboro area, which itself is a part of the broader Portland metropolitan region. As a result, resources PGE acquires to serve these facilities, other than distribution lines, will often be shared among residential, commercial, and data center customers alike. Directly allocating portions of investments to a particular data center would be complicated and imperfect, placing a substantial burden on Staff and other stakeholders reviewing PGE's allocation decisions. Additionally, the number of data centers entering PGE territory would require constant review, bogging down Commission Staff's resources. Thus, the tariff approach is appropriate for PGE, because it allows for class-based allocation decisions utilizing a methodology suited to the current paradigm of data center-driven load growth, which will occur in bulk during rate cases.

PacifiCorp expects fewer, larger data centers, so individual review of service contracts is likely to be practical for Commission Staff and the Commission itself. PacifiCorp's service territory is also more rural and covers disparate swaths of the state, meaning that new resources are more likely to serve a single data center, resulting in less complicated allocation decisions and (ideally) an easier review process of those decisions. While both residential advocates and data center-aligned parties in the PacifiCorp implementation docket were skeptical of PacifiCorp's initial propose due to its lack of specificity and reliance negotiating each term of future contracts, the Stipulation provides a detailed framework outlining what, how, and when costs will be recovered from data centers.

3. Terms governing service and cost-recovery

a. Contract Length¹

For PGE, the minimum contract length scales upward with a data center's capacity. For customers with a capacity of 20 MW, the minimum contract length is 10 years. The minimum length increases 1 year with each additional 10 MW of capacity (30 MW = 11 years, 40 MW = 12 years, etc.). All customers 220 MW and greater will have a minimum contract length of 30 years. There is no maximum contract length. For PacifiCorp, all customers will be able to sign contracts between 10 and 30 years.

The difference in approach is a function of the cost-allocation methodologies adopted for both companies. For PGE, resources will still be paid off during their typical depreciation schedules, which generally extend several decades to over half a century. Thus, longer contracts are preferred to lock a data center into PGE's territory for a great share of the depreciable lives of the resources built to serve it. Longer contract lengths reduce the risk of stranded assets because a greater share of the underlying resources will be paid for during the initial length of the contract. The dynamic is reversed for PacifiCorp, where the entire cost of any resources will either be paid before service begins (distribution and small transmission) or paid for entirely during the initial term of the contract (large transmission and generation). Because the full cost will be paid for during the initial term, there is less risk of stranded assets if contract lengths are shorter, reducing the time over which a resource is paid off. There will always be *some* risk that a data center company will go bankrupt, leaving it unable to pay for the remainder of its contract, even with an

¹Even though the rates data centers in PGE pay are established in a tariff, they still must also sign a contract that dictates many of the other terms of service detailed below, like the minimum demand charge, exit fee, credit requirements, etc.

exit fee and credit requirements in place, so reducing the time over which the data center pays for a resource reduces the risk that the customer will be unable to pay its bill. Thus, a shorter contract length is preferred when costs are directly allocated in full.

b. Minimum demand charges

The POWER Act requires that customers pay a minimum percentage based on their contracted demand towards the cost of service, essentially requiring a minimum demand charge. PGE has a minimum demand charge set at 90%, meaning a data center will be charged as if it used 90 percent of its Allocated System Capacity—the amount of capacity it is contracted to use—even if its actual demand drops below that level. It will be charged at its actual demand if it is at or above 90 percent of its Allocated System Capacity. PacifiCorp will charge customers either based on “flat billed demand” or based on their “reserved capacity.” Flat billed demand, which PGE also uses for distribution, means that a resource’s cost will be billed at a flat level each billing period at an amount necessary to recover the full cost during the contract term. Billing at reserved capacity is equivalent to having a minimum billed demand of 100%.

The two policies are roughly similar, requiring customers to either pay as if they are using either 90 or 100% of their allocated (or reserved) capacity. Either would represent the most stringent version of this policy in the country.

c. Exit Fee

PGE and PacifiCorp’s exit fees are roughly similar. Both generally require customers to pay for the remaining minimum cost of their contract, and allow for customers to be refunded if another customer utilizes the resources built to serve the customer within three years of the original customer’s exit. The terminology is slightly different reflecting the different cost-allocation approaches, but the effect is essentially the same.

d. Exceedance penalty

The exceedance penalties for PGE and PacifiCorp differ somewhat but both apply to any exceedances of allocated/reserved capacity. PGE’s acts as a multiplier to the rate data centers pay for transmission (4x) and generation (1.5x). PacifiCorp already created an exceedance penalty for customers over 50 MW in its last rate case, UE 433. The exceedance penalty is its own charge (the “Excess Demand Charge”) which is currently set at roughly 3x the rate for transmission for large customers. Data centers also must get approval from PacifiCorp to exceed their reserved capacity, and PacifiCorp can curtail unapproved exceedances.

The difference in approach should be useful in determining the best method of limiting exceedances. The exceedance penalty for PGE was placed in the tariff, rather than the required contract language, allowing it to be flexible in the future in the event that a different penalty would be more effective at both reducing exceedances and avoiding underestimated demand.

e. Credit Requirements

The credit requirements for both utilities are roughly similar, except PacifiCorp will reduce a data center credit requirement as the contract progresses so that it is roughly equal to the remaining exit fee (which itself will reduce over time as the customer pays for a greater share of its infrastructure). The Commission was open to this concept for PGE, but stated that the record was silent on the issue and that PGE could propose reducing credit requirements in future filings.

4. HB 2021 Compliance and Energy Efficiency Surcharge

For PGE, the Commission approved an interconnection queue that only allows a new data center to connect if it has a reliable plan to be served with “HB 2021-compliant resources” i.e., non-emitting resources. The PacifiCorp Stipulation instead states that any incremental resources PacifiCorp acquires to serve a data center must be non-emitting. Additionally, to the extent that PacifiCorp will serve the customer with existing emitting resources, the data center will need to pay for other emission reduction actions such that its existence will not cause a net increase in PacifiCorp’s emissions.

While the framework is stated differently, the practical effect of each approach is similar: new data centers should not cause an increase in emissions for either utility. An important note is that the interconnect queue for PGE is being implemented more fully in PGE’s current rate case, UE 473. GEI has intervened in that case and intends to engage on PGE’s proposal outlining the details of the interconnection queue.

Data centers over 100MW in PGE and PacifiCorp territories will both be subject to a 1 cent/kWh surcharge to fund non-cost-effective energy efficiency, enabling repairs, and distributed energy resources (DERs) for low-income customers. If the PGE surcharge is found to be illegal under Oregon law in an appeal of the Commission’s Order, the PacifiCorp surcharge will also be removed. But, if the Legislature then fixes the legal infirmity a court found or otherwise allows for a similar surcharge, it will be reinstituted. Thus, the surcharge is functionally the same for both utilities. One additional note for PacifiCorp is that the Stipulation applies this term to all data centers, existing and new, rather than just new data centers.

5. Reporting

Both PGE and PacifiCorp are required to submit reports with information about the energy use of their data center customers. PGE will make annual reports and PacifiCorp will make biannual reports. The two regimes are roughly similar, but one difference is that the public reporting for PacifiCorp will provide information in ranges to prevent disaggregation. This will continue until PacifiCorp has data centers with at least four unique owners. Implicitly, the data centers currently in PacifiCorp territory are owned by fewer than four companies. Thus, if exact information is provided even in aggregate, the owners of the data centers will be able to disaggregate the information. For example, if there are two companies that own data centers, each will know their own usage. So, if PacifiCorp releases public information about the aggregate usage of their data centers, each owner will be able to figure out the usage of the other company by subtracting their usage from the aggregate numbers. Once there are several owners, though, that becomes more difficult. One other difference is the PacifiCorp Stipulation details exactly what information will be public and what information will be confidential. For PGE, the

Commission said that it will not pre-judge the confidentiality of the information and will instead decide on confidentiality of information when the reports are filed.

6. Site Aggregation

Site aggregation policies are important to prevent data centers from building multiple facilities each just below the capacity threshold for certain regulations. One could imagine it may be advantageous for a data center company to build three 19.5 MW data centers rather than one 60 MW data center to avoid the application of the POWER Act. So, for each utility, data centers with like ownership that are within 2,500 feet of each other (any portion of land for one facility is within 2,500 feet of the closest portion of land of another facility) will have their capacities aggregated for the purpose of applying these rules. PacifiCorp has an additional requirement that any two data centers with similar ownership will have their capacity aggregated if they are anywhere in PacifiCorp's Oregon territory. PacifiCorp's aggregation policy is slightly more expansive, which accounts for its more geographically dispersed service territory.

7. Flexibility

The Commission rejected a proposal in PGE's case to create a sub-tariff granting value to data centers for their flexibility. A data center company, Verrus, made the proposal late in the proceeding and the Commission stated that the record did not support it at the time. PGE has since made a proposal related to flexibility in its rate case on which GEI plans to engage. The PacifiCorp Stipulation opens the door for data centers to benefit from any flexibility value they provide, but states that PacifiCorp will propose a uniform framework at a later time to take that flexibility value into account.

The value of flexibility is a difficult question. While there almost certainly is value to the grid from data center flexibility, it often comes at a cost for surrounding areas because flexibility is generally achieved using diesel generators. Flexibility is therefore not just an energy policy question, but a more traditional environmental question as well. As a result, future advocacy efforts should begin to develop policy solutions to promote flexibility that can be achieved without the use of diesel generators.

8. Conclusion

GEI and other advocates have successfully secured some of the most protective measures in the country to set up structures to drive clean energy generation, energy efficiency investments for low-income customers, and ratepayer protections. However, an appeal has already been filed challenging the PUC order on PGE's POWER Act tariff, and we expect additional challenges. Even assuming the PGE Order withstands an appeal and that the Commission approves the PacifiCorp Stipulation, continued diligence on these issues is necessary. PGE's rate case further implements the POWER Act in the wake of the Commission's Order in UM 2377. The implications of POWER Act implementation are also beginning to show up in PGE's Integrated Resource Plan. PacifiCorp's individualized approach will also necessitate continued engagement to ensure that the company properly assigns costs to its data center customers and is managing load growth while reducing its emissions in individualized contract negotiations.