

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1610

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF OREGON)	REPLY TO PACIFICORP’S RESPONSE TO RENEWABLE ENERGY COALITION’S MOTION TO COMPEL PHASE II – LOAD POCKETS
Investigation Into Qualifying Facility Contracting and Pricing.)	
_____)	

I. INTRODUCTION

The Renewable Energy Coalition (“the Coalition”) files this reply to PacifiCorp’s response to the Coalition’s motion to compel discovery. The Coalition continues to request that the Oregon Public Utility Commission (the “Commission” or “OPUC”) Administrative Law Judge (“ALJ”) Traci A. G. Kirkpatrick require PacifiCorp to provide full and complete answers to the Coalition’s discovery requests. PacifiCorp’s response claims that the only issue remaining in this proceeding is how to calculate and assign third-party costs attributable to qualifying facilities (“QFs”) in Oregon. While the Coalition agrees in principle, PacifiCorp’s characterization of the issue is incorrect and ignores the fact that determining what type of transmission PacifiCorp should purchase to transmit QF power is also still in dispute. In order to know **how** to assign third-party transmission costs, the parties must first understand **what types** of third-party transmission costs should be purchased. The Commission has not, and should not, provide PacifiCorp with unfettered discretion to discriminate against and thwart QF development by purchasing and assigning the most expensive and unnecessary third-party transmission costs upon QFs.

II. ARGUMENT

1. **All of PacifiCorp's Transmission Arrangements and Curtailment Rights are Relevant to Determine Reasonable Third-Party Transmission Costs for Oregon QFs in Load Pockets**

PacifiCorp's attempt to narrowly frame the issue assumes that it has already won an issue that the Commission has not decided. Although PacifiCorp has "gone to great lengths" to explain why it must use long term firm point to point ("LTF PTP") transmission, the Commission has never ruled that PacifiCorp must do so.¹ The remaining issues in this proceeding include determining what reasonable third-party transmission costs are attributable to QFs in load pockets. In short, PacifiCorp should not be permitted to use lower cost transmission alternatives for its own generation and other purchased power while requiring QFs to pay for the most expensive transmission option available.

To better understand what type of transmission alternatives are available to PacifiCorp in alleviating load pocket issues, it is reasonable to consider what types of transmission alternatives PacifiCorp has used for QF and non-QF power. Without this information it will be impossible to fully consider solutions to the load-pocket issue. The information requested is relevant and PacifiCorp has not claimed that it is privileged, so the Commission should compel PacifiCorp to answer the data requests.²

a. LTF PTP and Less Expensive Transmission Options

PacifiCorp's response ignores that OATT-based products are not the only reliable transmission arrangements available to transmit QF power. Other parties have submitted evidence that PacifiCorp can and has used other forms of transmission, but the parties

¹ PacifiCorp's Response at 5 (Sept. 29, 2016).

² ORCP 36(B).

have not fully explored all the potential transmission options. PacifiCorp, however, continues to argue that QFs should not be allowed to use alternative delivery arrangements. PacifiCorp has a responsibility to purchase the lowest cost reliable transmission on behalf of QFs.³ PacifiCorp should not be allowed to quash QF development by using lower cost and more flexible approaches for its own generation while requiring more expensive transmission arrangements from QFs.⁴

PacifiCorp's response cites to its own testimony rather than a Commission order. The Company reiterates that it has already "stated" its belief that it must procure LTF PTP transmission to deliver QF power in order to remain compliant with Federal Energy Regulatory Commission ("FERC") precedent.⁵ As the Commission has not ruled what type of transmission PacifiCorp can or must use, whether PacifiCorp must use LTF PTP is still at issue. Thus, to determine what kind of transmission is reasonable to attribute to Oregon QFs, parties and Staff should be allowed to inquire about what PacifiCorp can and has used for its QF and non-QF generation in Oregon and other states.

For example, one less expensive option available to PacifiCorp is curtailment. PacifiCorp opposes providing information on curtailment, arguing that FERC rules limit QF curtailment to certain narrow circumstances.⁶ This premise is wrong. While the

³ Coronal's Pre-hearing Brief at 5-6 (Sept. 2, 2015).

⁴ PacifiCorp's parent company has a well known anti-PURPA agenda. Hearing on Energy Infrastructure Legis. Before the S Energy and Natural Res. Comm., 114th Cong. 1 (May 14, 2015) (statement of Jonathan M. Weisgall, VP Legislative and Regulatory Affairs, Berkshire Hathaway Energy) (endorsing S. 1037 to expand the provisions for termination of mandatory purchase requirements under the PURPA and S. 1037 terminating the 1-mile rule)

⁵ PacifiCorp's Response at 2.

⁶ See PacifiCorp's Response at 3 ("FERC precedent prohibits the curtailment of QF resources except under two very narrow circumstances: (1) system emergencies

Commission must provide an option to all QFs that allows them to sell the full output at a fixed price in all events other than emergency conditions, it does not follow that the Commission must provide no other options to QFs. Moreover, FERC regulations explicitly allow a QF and utility to contract for any rates or terms and conditions that differ from those required by FERC.⁷ The Commission already allows QFs to sell under multiple options and give up certain rights.⁸ Thus, nothing prevents a QF from agreeing to curtailment or the Commission from providing guidance, including standard contract rates and terms, for curtailments. If contracting for curtailment is a lower cost option than building or purchasing expensive transmission, PacifiCorp should not foreclose a QF's right to do so.

The Coalition could propose an alternative PPA term for those QFs who may prefer limited curtailment to avoid the expense of LTF PTP transmission out of a load pocket. The Coalition's data requests are designed to ascertain whether PacifiCorp has ever agreed to curtailment terms similar to such a proposal. This information is relevant to determine: 1) whether it is contractually possible to design such a provision; and 2) whether such provisions have allowed PacifiCorp Transmission to designate the QF as a network resource.

Considering the possibility for limited curtailment rights underscores why PPAs outside of load pockets are relevant. PacifiCorp argues that QF PPAs for QFs outside of

and (2) extreme light loading conditions.”); *id.* at 5 (“These non-QF PPAs are not subject to the same federal regulatory requirements under PURPA.”).

⁷ 18 CFR 292.301(b).

⁸ For example, QFs can sell non-firm power, which allows them to be curtailed, and QFs in Oregon can sell under renewable and non-renewable rates.

load pockets are outside the scope of the remaining issue.⁹ This argument is incorrect, because those PPAs could demonstrate instances where PacifiCorp obtained a contractual curtailment right and was still able to designate the QF or non-QF as a network resource and pay a fixed price rate. PacifiCorp may claim that such curtailment rights do not exist or preclude network resource designation. The parties should be entitled to see if any of PacifiCorp's PPAs (QF or non-QF) address these factual issues.

b. Oregon and Non-Oregon PPAs

PacifiCorp likewise opposes providing information outside of Oregon, arguing non-Oregon PPAs for QFs in load pockets are irrelevant. PURPA, however, is a national statute and, if PacifiCorp is using other forms of transmission for non-Oregon QFs, then that information is relevant and should be considered. As discussed above, all types of transmission PacifiCorp uses to transmit QF power must be considered, and parties should be able to review all of PacifiCorp's transmission arrangements to determine if they may be available options to move QF power in Oregon.

PacifiCorp's OATT applies uniformly in each state that PacifiCorp operates in, and PacifiCorp is relying on its OATT as part of its response argument.¹⁰ If PacifiCorp does not want to "engage in a widespread, multistate search for all non-Oregon QF PPAs and associated agreements," then PacifiCorp should stop making blanket claims that its OATT dictates only one type of treatment of the load pocket problem.

PacifiCorp's OATT argument also underscores why settlement agreements are relevant and may be significant. Settlement agreements may show PacifiCorp has in fact agreed to use lesser forms of transmission to wheel QF power than LTF PTP transmission,

⁹ PacifiCorp's Response at 7.

¹⁰ Id.

or that it has agreed to curtailment terms that resolve the load pocket problem.¹¹ All the terms and conditions dictating PacifiCorp's wheeling of QF power are relevant and should be considered whether those provisions are in PPAs or in settlement agreements. Thus, all PPAs—and especially those that have resulted from settlements agreements—may be necessary to rebut PacifiCorp's claims.

2. PacifiCorp's Commercially Sensitive Information is Already Protected by Established Commission Processes

PacifiCorp's response argues that because the Coalition represents entities that could be competitors, the Coalition should not be provided information that might undermine the Company's request for proposals ("RFP") process. This argument is misguided. The Commission has already established a process to address PacifiCorp's concerns, and that process does not permit PacifiCorp to withhold commercially sensitive information. In fact, a standard protective order is already in place in this proceeding and is protecting PacifiCorp's information. That protective order requires PacifiCorp to provide the information the Coalition is seeking, requires the Coalition to obtain written permission from PacifiCorp before using or disclosing that information for any purpose other than participating in this proceeding, and provides PacifiCorp an opportunity to object to consultants who wish to review the material.¹²

If PacifiCorp believes the standard protective order does not provide the Company with sufficient protection, it should request a modified protective order instead

¹¹ All parties entering into settlement agreements with PacifiCorp are aware that their settlements can be provided in state regulatory proceedings, so providing this information should not chill the ability of the parties to enter into settlement agreements. Finding otherwise would promote secret deals and incentivize PacifiCorp to withhold information.

¹² Protective Order 12-461 at 2 (Nov. 27, 2012).

of withholding relevant information. PacifiCorp has requested modified protective orders in numerous proceedings.¹³ Requesting a modified protective order would allow PacifiCorp to object to specific individuals who want to gain access to PacifiCorp's protected information. PacifiCorp's objection to witness review in this case is premature, because the only Coalition individuals who have signed the protective order are employees of the Coalition's law firm and the Coalition has not requested witness review.

PacifiCorp's response points to the Commission's ruling in UE 307, where certain information was not provided to an expert witness, and inaccurately suggests that the Commission declined to provide the confidential bid material to Noble Solutions.¹⁴ PacifiCorp provided the material and made it available to counsel for Noble Solutions under the modified protective order, but withheld its availability to Noble Solutions' consultant Kevin Higgins, on the basis that he represents market participants in renewable energy certificate ("REC") sales.¹⁵ Without agreeing that Mr. Higgins should not have been provided the confidential material, the same treatment here would dictate that PacifiCorp use a modified protective order for similar information and provide it to the Coalition's counsel and any consultants who meet the criteria of the protective order.

Moreover, a large part of the material requested in this case is much less sensitive than the material requested by Noble Solutions. Noble Solutions sought the final purchase prices and terms of REC purchases in the RFP while the final negotiations were

¹³ E.g., Re PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism (TAM), Docket No. UE 307, PacifiCorp's Motion for Modified Protective Order (June 24, 2016); Re PacifiCorp, dba Pacific Power, Request for Approval of a 2008R-1 Solicitation Process for New Renewable Resources, Docket No. UM 1368, PacifiCorp's Motion for Additional Protection (April 24, 2009).

¹⁴ PacifiCorp's Response at 6.

¹⁵ Re PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism (TAM), Docket No. UE 307, PacifiCorp's Objection at 1-2 (Aug. 19, 2016).

still ongoing. Here, the Coalition's requested material is similar to the information made available to bidders themselves in past RFPs. For example, the Coalition requested the actual cost assumptions for Bonneville Power Administration ("BPA") PTP transmission utilized in the RFP for evaluation of bids from resources located in a load pocket. This information should not be confidential at all. The costs of BPA transmission assumed in the RFP is relevant to this case where parties are trying to determine a way to assign a fixed cost of BPA transmission to QFs in a long-term contract.

PacifiCorp's past modified protective orders did not prevent lawyers and their staff from reviewing confidential information. PacifiCorp does not point to, and the Commission has never imposed a blanket prohibition on the lawyers representing the Coalition in this proceeding. To the contrary, in PacifiCorp's request for proposal proceeding in UM 1368, organizations representing competitors were allowed access to PacifiCorp's confidential RFP information.¹⁶ PacifiCorp's argument that its commercially sensitive information is not protected by the existing Commission policy seems to suggest the Coalition's counsel will violate the protective order. The Coalition notes the offensive implication and requests the ALJ direct PacifiCorp to follow its existing policy regarding protective orders instead of permitting the Company to use such a baseless ad-hoc justification to withhold relevant information.

¹⁶ The Northwest and Intermountain Power Producers Coalition ("NIPPC") and the Industrial Customers of Northwest Utilities ("ICNU") signed Special Protective Order No. 09-160. Both organizations have individual members that sell power in the market and that are selling (or have sold) power to PacifiCorp. ICNU, NIPPC and other parties that represent competitors also reviewed some of the confidential material in PacifiCorp's recent RFP that PacifiCorp is seeking to withhold in this proceeding.

3. PacifiCorp Load Pocket Information Would Allow Parties to Investigate How QFs Contribute to the Need to Purchase Third-Party Transmission

PacifiCorp claims producing the load pocket information the Coalition requested is infeasible, in part because it is only available to the transmission provider. PacifiCorp should provide all information within its possession, regardless of whether it is confidential or in the hands of its transmission function. In considering how to assign third-party transmission costs, the Commission and the parties should understand which Oregon QFs may be impacted by PacifiCorp's proposals. It would be a violation of basic due process principles for those parties who may be significantly and harmfully impacted by PacifiCorp's proposal to not have access to basic information regarding whether, and to what extent, they will be harmed. Moreover, the Commission should understand whether it might impose a significant cost increase on existing QFs in Oregon before making its final determination.

In addition, just as some costs attributable to Oregon QFs must be assigned, some existing Oregon QFs are providing benefit to PacifiCorp by reducing the Company's need to build or acquire transmission. Determining the scope of the benefits provided is relevant to calculating and assigning the third-party transmission costs attributable to QFs.

PacifiCorp also claims the load pocket information is administratively burdensome.¹⁷ The minimum and maximum load in PacifiCorp's non-contiguous service territory areas should not be overly burdensome for PacifiCorp to determine. In fact, PacifiCorp has already provided this information for two Oregon QFs. It seems that PacifiCorp will need this exact information to attribute any charges to Oregon QFs, as

¹⁷ PacifiCorp's Response at 8.

PacifiCorp proposes to do. Thus, as this information is relevant to PacifiCorp's proposal, the Company should either claim a privilege or provide the information.

V. CONCLUSION

For the reasons discussed above, the Coalition respectfully requests that the ALJ require PacifiCorp to provide complete responses to the Coalition's discovery requests.

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Respectfully submitted,



Irion A. Sanger
Sidney Villanueva
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for Renewable Energy Coalition