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April 6, 2017

***VIA ELECTRONIC FILING***

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

Attn: Filing Center

**RE: UM 1610—Investigation into Qualifying Facility Contracting and Pricing –  
PacifiCorp's Reply**

PacifiCorp d/b/a Pacific Power encloses for filing its Reply to parties' responses to the Motion to Close the Docket in the above-referenced proceeding.

If you have questions about this filing, please contact Natasha Siores at (503) 813-6583.

Sincerely,

R. Bryce Dalley  
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1610

In the Matter of  
PUBLIC UTILITY COMMISSION OF  
OREGON  
Investigation Into Qualifying Facility  
Contracting and Pricing

PACIFICORP’S REPLY IN  
SUPPORT OF MOTION TO CLOSE  
DOCKET

**I. INTRODUCTION**

In accordance with OAR 860-001-0420, PacifiCorp d/b/a Pacific Power (PacifiCorp) submits this reply to parties’ responses to PacifiCorp’s motion to close the docket. PacifiCorp maintains its request—supported by Portland General Electric Company (PGE) and Idaho Power Company—that the Public Utility Commission of Oregon (Commission) issue an order closing this docket. In the alternative, PacifiCorp requests that the Commission allow all parties to submit legal briefing on the appropriate scope of this proceeding before establishing a new procedural schedule, which is also supported by PGE and Idaho Power. PacifiCorp focuses this reply on concerns raised by Commission Staff and the Joint QF Parties.<sup>1</sup>

PacifiCorp first clarifies several mischaracterizations and errors in the Joint QF Parties’ response. These flaws inappropriately expand the scope of this proceeding and create the deceiving impression that closing the docket will have disastrous, sweeping impacts on all future qualifying facility (QF) negotiations with PacifiCorp. This is not the case. The issue of how to allocate the costs of third-party transmission service in dockets

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<sup>1</sup> The Joint QF Parties are the Community Renewable Energy Association and the Renewable Energy Coalition.

UE 235 and UM 1610 has always been limited to those costs associated with PacifiCorp's merchant function's (Energy Supply Management or ESM) transmission service request to transmit QF power away from the point of interconnection to load, not costs associated with a QF's request to interconnect with PacifiCorp system. Thus, PacifiCorp's QF interconnection studies attached to and discussed in the Joint QF Parties' response are irrelevant to this proceeding, in addition to being incorrectly described.

To address the significant confusion that these two separate services continue to create for the Joint QF Parties, Section II.A sets forth a basic overview of the difference between transmission service and interconnection service. This docket does not involve QF interconnections or third-party transmission alternatives identified in QF interconnection studies. This docket involves ESM's request for transmission service to deliver QF power to load, and (contrary to the Joint QFs' unsubstantiated assertions), PacifiCorp does not plan to begin identifying in QF *interconnection studies* the third-party transmission arrangements that would have otherwise been identified in ESM's *transmission service studies*.

To demonstrate that the Joint QF Parties' claims about PacifiCorp's "actual plans" are unfounded, and to reduce future confusion over the contents of studies for the two different services, PacifiCorp proposes to discontinue:

- Allocating to QFs the cost of third-party transmission service that PacifiCorp transmission identifies as necessary in *ESM's transmission service request studies*, as proposed in PacifiCorp's motion to close the docket; and
- Identifying a third-party transmission alternative for QF interconnection customers to consider in *QF interconnection service request studies*, two of which were attached to the Joint QF Parties' response.

PacifiCorp next addresses Staff and the Joint QF Parties' concern that PacifiCorp somehow would not be bound by its commitments to discontinue allocating the costs associated with third-party transmission service at issue in this proceeding. PacifiCorp

maintains the highest possible standards of regulatory integrity and compliance, and PacifiCorp believed it was acting consistent with Commission authority when it included power purchase agreement (PPA) addendums addressing the potential cost allocation of third-party transmission service. Section II.B explains the inclusion of these costs in each of the PPAs listed in the Joint QF Parties' response. In addition, to provide the additional certainty sought by Staff and the Joint QF Parties regarding future QF PPA negotiations, PacifiCorp suggests that any Commission order closing the docket specifically acknowledge the two PacifiCorp commitments listed above and direct PacifiCorp to request appropriate Commission guidance if circumstances change in the future.

## II. ARGUMENT

### A. **The Joint QFs Fundamentally Misunderstand the Scope of the Docket and Drastically Overstate the Potential Ramifications of Closing It**

The Joint QF Parties speculate that PacifiCorp's "actual plans" are to allocate the costs of third-party transmission service using other mechanisms, such as requiring QFs to pay for "the construction of multi-million dollar transmission lines or conditioning the QF's interconnection on an agreement with [PacifiCorp ESM] to obtain third-party transmission rights to deliver any excess generation to an area with sufficient load to sink the generation."<sup>2</sup> The Joint QF Parties then describe two QF interconnection studies that allegedly demonstrate that PacifiCorp has "already begun pursuing this alternative method of assigning third-party transmission costs to QFs" but is hiding these actual intentions from the Commission and parties to this proceeding.<sup>3</sup> This allegation demonstrates the Joint QF Parties' continued

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<sup>2</sup> Docket No. UM 1610, Joint QF Parties Response at 2 (March 30, 2017).

<sup>3</sup> *Id.*

confusion about the difference between interconnection service and transmission service and, thus, the scope of this docket and the potential ramifications of closing it.

***1. The Scope of This Docket Is Limited to Third-Party Transmission Arrangements Necessitated by ESM's Transmission Service Requests to Deliver QF Power***

As evidenced by both Staff's and the Joint QF Parties' responses, the third-party transmission issue in dockets UE 235 and UM 1610 involved only third-party transmission arrangements necessitated by ESM's request for *transmission service* to deliver QF power to load.<sup>4</sup> ESM is the transmission customer, PacifiCorp transmission is the transmission provider providing transmission service, and the Federal Energy Regulatory Commission (FERC) jurisdictional transmission service agreement governs the provision of transmission service. Sometimes PacifiCorp transmission determines that it can only reliably accommodate ESM's transmission service request if ESM makes a third-party transmission service arrangement to transmit any QF power in excess of local load out of a load pocket to a different area of PacifiCorp's system.

As explained in PacifiCorp's motion, PacifiCorp transmission has not made this determination as often as originally anticipated. As a result, PacifiCorp proposes to discontinue allocating to QFs the cost of third-party transmission service arising from an ESM transmission service request. This means PacifiCorp will not include those costs in a QF PPA addendum or in any other "secret" mechanism that the Joint QF Parties allege exists.

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<sup>4</sup> See, e.g., Staff Response at 1-2 (reviewing PacifiCorp's original docket UE 235 proposed Schedule 37 language modifications discussing potential contingencies that may be placed on PacifiCorp transmission's designation of a QF PPA as a network resource, which is another way of saying PacifiCorp transmission's approval of ESM's transmission service request to deliver the QF power to load).

## 2. *This Docket Does Not Involve QF Interconnection*

The third-party transmission arrangements at issue in this proceeding have nothing to do with QF interconnections with PacifiCorp's electric system, PacifiCorp transmission's study process for QF interconnections, or the interconnection agreements governing those arrangements.<sup>5</sup> For QF interconnection service, the QF (not ESM) is the interconnection customer, PacifiCorp transmission is the transmission provider providing interconnection service, and the state jurisdictional<sup>6</sup> interconnection agreement governs the provision of interconnection service.

The Commission has well-established rules and precedent governing QF interconnections and associated cost allocation.<sup>7</sup> As the Joint QF Parties accurately noted in their response, PacifiCorp's position has been—and still is—that these interconnection rules and orders do not address the third-party transmission cost allocation at issue in this proceeding because the arrangements involve *ESM* as purchaser of the third-party transmission, and any allocation of the cost of those third-party arrangements “must take

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<sup>5</sup> PacifiCorp described this in more detail in its opening testimony in this proceeding. See PAC/1700, Griswold/7-8.

<sup>6</sup> Most QF interconnection agreements are state jurisdictional, with the exception of when a QF is permitted to make sales to third parties. See, e.g., *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 62 FERC ¶ 61,128, *order on reh'g*, 64 FERC ¶ 61,139 at 61,991, *order on reh'g*, 65 FERC ¶ 61,081 (1993).

<sup>7</sup> For example, in Docket No. UM 1401, the Commission adopted rules and guidelines for interconnections of QFs larger than 20 MW, finding that QFs should pay for system upgrades required to mitigate any adverse system impacts caused by the QF interconnections. *Investigation into Interconnection of PURPA Qualifying Facilities With Nameplate Capacity Larger than 20 Megawatts to a Public Utility's Transmission or Distribution System*, Docket No. UM 1401, Order No. 10-132 at 7 (April 4, 2010) (“Interconnection Customers are responsible for all costs associated with network upgrades unless they can establish quantifiable system-wide benefits, at which point the Interconnection Customer would be eligible for direct payments from the Transmission Provider in the amount of the benefit.”). In Docket No. AR 521, the Commission adopted rules and guidelines for interconnections of QFs under 10 MW, finding that QFs should pay for system upgrades that are necessitated by the interconnection of a small generating facility and required to mitigate any adverse system impacts caused by the interconnection. *In the Matter of a Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket No. AR 521, Order No. 09-196 at 5 (June 8, 2009).

place in an agreement to which both [ESM] and the QF are parties.”<sup>8</sup> ESM is not involved with a QF’s interconnection studies or interconnection agreement (and must secure a waiver from a QF to even view any non-public interconnection materials), so a QF’s interconnection agreement cannot address the third-party transmission arrangements at issue in this docket.

**3. *The QF Interconnection Studies Attached to the Joint QF Parties’ Response Have No Bearing on This Proceeding***

The Joint QF Parties allege that the two QF interconnection studies attached to their response demonstrate that PacifiCorp has “already begun” to pursue an alternative to third-party transmission cost allocation involving the construction of transmission lines or the conditioning of a QF’s interconnection on ESM obtaining third-party transmission rights. As described above, these QF interconnection studies have no bearing on this proceeding, which involves only third-party transmission arrangements triggered by ESM’s transmission service request.

Even if the QF interconnection studies were relevant, the Joint QF Parties provide an inaccurate and misleading description of their contents. The Joint QF Parties claim, for example, that the interconnection studies provide that the QF “may either pay the cost to construct an 80-90 mile transmission line out of the load pocket or arrange for [ESM] to obtain third-party transmission to solve the problem. In other words, if the QF does not agree to pay [ESM] for third party transmission, then it will need to pay to build a new transmission line.”<sup>9</sup>

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<sup>8</sup> Joint QF Parties Response at 3-4, citing *In the Matter of PacifiCorp, dba Pacific Power, Revises Schedule 37, Avoided Cost Purchases from Qualifying Facilities (QF) of 10,000 kW or Less*, Docket No. UE 235, PacifiCorp’s Memorandum of Law in Support of Advice No. 11-011 at n.27 (June 27, 2011).

<sup>9</sup> Joint QF Parties Response at 8-9.

This description is wrong. For example, page 7 of the interconnection study for Q758 cited by the Joint QF Parties makes it clear that *higher-queued* projects, not the QF, are responsible for constructing certain transmission modifications. The study continues that the Q758 project would only be responsible for those transmission modifications if it wants an in-service date before the higher-queued projects. The study also states that the Q758 project may be subject to restudy if the higher-queued projects are materially modified or drop out of the interconnection queue. Finally, the study states that a possible alternative to the transmission modifications would be procurement of third-party transmission *by the interconnection customer*, which in this case would be the QF, not ESM. The study notes that the QF must coordinate with ESM (as the power purchaser) if the QF chooses this alternative, but ESM is not the entity responsible for making any third-party transmission arrangements, nor would the QF be paying ESM for transmission service.

This is a far cry from the Joint QF Parties' claim that the interconnection studies—issued last year, long before PacifiCorp proposed to close this docket or even filed testimony in this docket—demonstrate that PacifiCorp has “already begun” to implement a secret alternative to the third-party transmission cost allocation at issue in this docket. Not only is the interconnection study language different from what the Joint QF Parties inaccurately describe, but the studies also further demonstrate that the QF interconnection studies—which, under certain circumstances, give the *QF interconnection customer* the option of purchasing third-party transmission as an alternative to constructing network upgrades—have no bearing on a proceeding limited to an examination of third-party transmission arrangements necessitated by *ESM's* request for *transmission service* to deliver QF power to load.

**4. *PacifiCorp Will Discontinue Identifying a Third-Party Transmission Alternative for QF Interconnection Customers to Eliminate the Joint QF Parties' Concerns and Confusion***

To demonstrate the Joint QF Parties' claims are unfounded and eliminate further confusion over the contents of ESM's transmission service studies and QF interconnection studies, PacifiCorp will eliminate any cost allocation or identification of third-party options in either context. In other words, PacifiCorp will discontinue:

- Allocating to QFs the cost of third-party transmission service that PacifiCorp transmission identifies as necessary in *ESM's transmission service request* studies, as proposed in PacifiCorp's motion to close the docket; and
- Identifying a third-party transmission alternative for QF interconnection customers to consider in *QF interconnection service request* studies, two of which were attached to the Joint QF Parties' response.

These changes should eliminate the parties' concerns and prevent future confusion.

The option was offered in the interconnection studies to provide flexibility to PacifiCorp transmission's QF and non-QF interconnection customers, but is not worth continuing to include given the risk of on-going confusion and additional false allegations about PacifiCorp's intentions.

**B. *PacifiCorp Is and Will Continue to Be Bound by Its Commitments***

The Joint QF parties use unsubstantiated allegations about PacifiCorp acting without express Commission authority to support a concern that PacifiCorp would not be bound by its commitments to discontinue allocating the costs associated with third-party transmission service at issue in this proceeding. First, PacifiCorp believed it was acting consistent with Commission authority when it included PPA addendums addressing the potential cost allocation of third-party transmission service. Subsection 1 below explains the inclusion of these costs for each of the PPAs listed in the Joint QF Parties' response. Second, to provide the additional certainty sought by Staff and the Joint QF Parties regarding future QF PPA

negotiations, PacifiCorp suggests in subsection 2 that any Commission order closing the docket specifically acknowledge the commitments PacifiCorp set forth in its motion to close the docket and this reply and direct PacifiCorp to request appropriate Commission guidance should circumstances change in the future.

***1. PacifiCorp Believed it Was Acting Consistently with Commission Authority***

The cost allocation proposal at issue in this proceeding has only affected four percent, or 12 MW, of PacifiCorp's QF power purchase agreements since PacifiCorp first raised the issue to the Commission in 2011. In its motion, PacifiCorp included a table and lengthy explanation of the limited number of QF PPAs affected since 2011, as well as detailed footnotes describing how PacifiCorp calculated the total number of affected PPAs and a listing of dockets in which PacifiCorp filed its QF PPAs. The Joint QF Parties ignore this transparent description and instead make serious accusations about PacifiCorp having a "demonstrated track record of acting outside the bounds of Commission orders."<sup>10</sup> PacifiCorp disagrees.

The PPAs that included an addendum addressing third party transmission fall into two basic categories: (1) those executed after Order No. 14-058 in which the Commission determined that third-party transmission costs must be assigned to a QF to comport with PURPA, deferring only the development of a standard mechanism to later phases; and (2) those executed before Order No. 14-058, but with the recognition that the allocation of third-party transmission costs was an open issue before the Commission. The development of the standard mechanism has taken many years—years during which it seems the Joint QF Parties believe PacifiCorp should have completely halted PPA negotiations with any QF

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<sup>10</sup> Joint QF Parties' Response at 15.

whose location raised potential excess generation and third-party transmission issues. In PacifiCorp's experience, this would cause serious problems for QF developers that, generally speaking, are heavily focused on moving their projects forward as quickly as possible. Instead, PacifiCorp chose to accommodate QF accelerated timeframes by developing mutually agreed-upon PPA addendums addressing third-party transmission issues. PacifiCorp believed this approach was consistent with the Commission guidance noted above, as well as FERC PURPA regulations that give utilities and QFs the flexibility to mutually agree to power purchase rates, terms, and conditions.<sup>11</sup>

**a. PPAs Executed After Order No. 14-058**

In Order No. 14-058, the Commission agreed with PacifiCorp and Staff<sup>12</sup> in deciding that “any costs imposed on a utility by a QF in excess of the utility’s avoided costs must be assigned to the QF in order to comport with PURPA’s avoided cost principle.”<sup>13</sup> The Commission deferred the issue of how to calculate and assign these costs in standard QF PPAs to the next phase of the docket.<sup>14</sup> The Commission also expressly declined to address any existing contracts in its order and “reiterate[d] that the sole purpose of these proceedings is to consider *prospective* revisions to policies and rules for QF standard contracts.”<sup>15</sup>

**i. Adams Solar Center and Elbe Solar Center**

As PacifiCorp explained in its motion, PacifiCorp has only purchased 12 MW of third-party transmission for new QF projects in the approximately five years since

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<sup>11</sup> 18 C.F.R. § 292.301(b) (“Negotiated rates or terms. Nothing in this subpart: (1) Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subpart.”).

<sup>12</sup> In summarizing Staff’s position, the Commission stated “Staff also states that third-party transmission costs imposed on a utility to wheel a QF’s output to load should be passed on to the QF.” Order No. 14-058 at 19.

<sup>13</sup> *Id.* at 22.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 21.

PacifiCorp's UE 235 filing: 10 MW for Adams Solar Center and 2 MW for Elbe Solar Center. The Commission's Order No. 14-058 concluding that any costs in excess of the avoided costs must be paid by the QF was issued February 24, 2014. These PPAs were both executed August 7, 2014.

Even though the Commission had not yet ruled on the appropriate mechanism to calculate and assign these costs on a prospective basis, the Commission had already concluded that, to comport with PURPA principles, any costs imposed on a utility above the utility's avoided costs must be assigned to the QF, and the counterparties to the PPAs agreed to include that assignment in an addendum.

ii. The Four Butter Creek Projects

As explained in PacifiCorp's motion to close the docket, PacifiCorp referenced the four Butter Creek projects in its June 27, 2011 Advice filing in docket UE 235. The four Butter Creek projects were terminated 18 months after their execution, and the same four projects subsequently submitted requests to PacifiCorp under a new name, Orchard Windfarm, in late 2015. PacifiCorp executed four new PPAs with Orchard Windfarm 1, 2, 3, and 4 in 2016 in which the parties agreed to include an Addendum B stating that PacifiCorp has the right to allocate the costs of third-party transmission service to the QF if PacifiCorp transmission determines third-party arrangements are necessary when it studies PacifiCorp ESM's transmission service request. Like Adams Solar Center and Elbe Solar Center, these PPAs were executed after the Commission issued Order No. 14-058.

**b. PPAs Executed Before Order No. 14-058**

As noted above, PacifiCorp executed three QF PPAs before Order No. 14-058, but with the recognition that the allocation of third-party transmission costs was an open issue before the Commission.

**i. EBD Hydro and Monroe Hydro**

The PPAs with EBD Hydro and Monroe Hydro were prepared while docket UE 235 was ongoing. At the time ESM was negotiating those agreements, it believed that PacifiCorp transmission might ultimately identify third-party transmission arrangements necessary to accommodate ESM's transmission service request to deliver EBD Hydro's and Monroe Hydro's power to load. Both PPAs therefore contain an addendum explaining that the Commission was currently considering the issue of cost responsibility for third-party transmission arrangements in docket UE 235, and that PacifiCorp intended to treat those costs consistent with the Commission's final order on that issue. Ultimately, however, PacifiCorp transmission's study determined that the addition of these QFs did not create an excess generation situation, so ESM did not need to secure third-party transmission and did not allocate any third-party transmission costs to the QFs.

**ii. TMF Biofuels**

As noted in PacifiCorp's motion to close the docket, PacifiCorp referenced TMF Biofuels in its June 27, 2011 Advice filing in docket UE 235. At the time TMF Biofuels applied for a QF PPA, ESM believed it was highly likely that the addition of that QF resource would create excess generation because the load pocket in which TMF Biofuels intended to locate was already experiencing an excess generation condition due to the construction and operation of the Threemile Canyon I, LLC project located in that same load

pocket. As a result, in its contract communications with TMF Biofuels, PacifiCorp referenced the ongoing Commission docket UE 235, and explained that the purpose was to determine who should bear the costs associated with third-party transmission service. To finalize the QF PPA negotiations within the accelerated timeframe requested by the QF, and as part of a broader compromise involving a variety of issues, the PPA counterparties agreed to and negotiated the structure for an addendum that addressed third-party transmission. The parties executed the PPA in 2012.

***2. The Commission’s Order Closing the Docket Can Provide the Certainty Sought by Staff and the Joint QF Parties***

PacifiCorp proposes to prospectively discontinue allocating the costs of third-party transmission service at issue in this proceeding to QFs. To eliminate additional confusion, PacifiCorp noted above that it will also discontinue identifying a third-party transmission alternative for QF interconnection customers to consider in QF interconnection service studies. To provide the additional regulatory certainty sought by Staff and the Joint QF Parties<sup>16</sup> regarding future QF PPA negotiations, PacifiCorp suggests that any Commission order closing this docket specifically acknowledge these PacifiCorp commitments and direct PacifiCorp to request appropriate Commission guidance should circumstances change in the future.

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<sup>16</sup> The Joint QF Parties devote several pages of their response to other misguided procedural arguments, such as claiming that it is too late for PacifiCorp to “voluntarily dismiss its Complaint.” Joint QF Parties Response at 12. PacifiCorp is not a plaintiff and is not attempting to voluntarily dismiss a complaint—Docket No. UM 1610 is a generic investigation. This third-party transmission issue did not arise through a complaint; rather, the genesis of the third-party transmission cost-allocation issue is found in PacifiCorp’s June 27, 2011 Advice filing in Docket No. UE 235. PacifiCorp has chosen not to address these extensive procedural arguments in detail because its position is that an order closing the docket with specific recognition of PacifiCorp’s commitments should provide sufficient regulatory certainty.

### III. CONCLUSION

PacifiCorp maintains its request that the Commission issue an order closing this docket. In the alternative, PacifiCorp requests that the Commission allow all parties to submit legal briefing on the appropriate scope of this proceeding before establishing a new procedural schedule.

Additionally, to reduce unnecessary confusion caused by the Joint QF Parties, PacifiCorp proposes to discontinue:

- Allocating to QFs the cost of third-party transmission service that PacifiCorp transmission identifies as necessary in *ESM's transmission service request* studies, as proposed in PacifiCorp's motion to close the docket; and
- Identifying a third-party transmission alternative for QF interconnection customers to consider in *QF interconnection service request* studies, two of which were attached to the Joint QF Parties' response.

PacifiCorp also suggests that any Commission order closing the docket specifically acknowledge the two commitments listed above and direct PacifiCorp to request appropriate Commission guidance should circumstances change in the future.

Respectfully submitted this 6<sup>th</sup> day of April, 2017.

By:   
Erin Apperson  
Legal Counsel  
PacifiCorp d/b/a Pacific Power