

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1610

In the Matter of  
PUBLIC UTILITY COMMISSION OF  
OREGON

STAFF RESPONSE TO PACIFICORP'S  
MOTION TO CLOSE DOCKET

Investigation into Qualifying Facility  
Contracting and Pricing.

**I. Introduction.**

Staff of the Public Utility Commission of Oregon (Staff) recommends that the Commission deny PacifiCorp's Motion to Close Docket. Staff appreciates PacifiCorp's attempt to bring a speedy resolution to the issues presented in this phase of Docket No. UM 1610. However, the relief requested by PacifiCorp would not resolve any issues, but leave them for another day. Staff recommends that this docket be closed only after a Commission order that resolves the remaining issues.

**II. Background.**

The issue regarding allocation of costs to move qualifying facility (QF) generation out of a load pocket dates back to at least Docket No. UE 235 opened in 2011. In 2011, PacifiCorp asked for Commission approval to modify Schedule 37 governing standard contracts with QFs to allow PacifiCorp to require QFs to pay third-party transmission costs as a condition of entering into a standard contract in cases where PacifiCorp determined third-part transmission was necessary. PacifiCorp proposed adding the following language to its Schedule 37:

The prices and other terms and conditions in an executed power purchase agreement with a OF over 100 kW will be contingent upon PacifiCorp Transmission approving designation of the OF as a Network Resource under PacifiCorp Transmission's FERC Electric Tariff Volume No. 11 Pro Forma Open Access Transmission Tariff and as further provided in this paragraph 7.

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1 (b) If in designating a OF as a Network Resource, PacifiCorp Transmission  
2 identifies a need for additional transmission service (other than the Network  
3 Integration Transmission Service for which the OF is designated a Network  
4 Resource) in order for the Company to use the OF's net output to serve the  
5 Company's network load, then the owner will have 15 business days from the date  
6 of the Network Resource designation to agree to pay all costs incurred to any  
7 third-party transmission provider for such additional transmission for the duration  
8 of the power purchase agreement. If available, such additional transmission will  
9 be acquired by the Company in the form of long-term firm point-to-point service  
10 in the capacity identified in the Network Resource status designation rounded up  
11 to the nearest whole megawatt.

12 (c) If the owner does not agree within the 15-business-day period to (N) pay for  
13 such additional transmission, or if such additional transmission is not timely  
14 available in the form of long-term firm point-to-point service, and the parties do  
15 not reach a mutually agreeable alternative solution within the 15-business-day  
16 period, the power purchase agreement will terminate at no fault of either party. In  
17 the event of such a termination, the QF may seek a power purchase agreement  
18 under PacifiCorp's Oregon Tariff Schedule 38 notwithstanding the QF's  
19 nameplate capacity of 10,000 kW or less.

20 Ultimately, the Commission closed Docket No. UE 235 without an order, so requested language  
21 was not approved. Issues related to allocation of any third-party transmission costs to move QF  
22 load from a load pocket were moved to the Commission's general investigation into QF  
23 Contracting and Pricing docketed as Docket No. UM 1610.

24 In its order resolving issues in Phase I of Docket UM 1610, the Commission stated that  
25 the issues raised in the proceeding regarding transmission costs for QFs located in load pockets  
26 related only to responsibility for costs incurred to move QF generation out of a load pocket, not  
27 the managerial responsibility and specifically cited a recent FERC order clarifying that "a QF  
28 cannot be required to obtain transmission service to deliver its output from the point of delivery  
29 to load."<sup>1</sup> With respect to issues relating to the costs, the Commission concluded that any third-  
30 party transmission costs incurred by a utility to move QF output from the point of delivery to  
31 load would be costs that are not included in the calculation of avoided cost rates in standard  
32 contracts, and therefore are costs that are additional to avoided costs.<sup>2</sup> The Commission also  
33 concluded that any costs imposed on a utility that are above the utility's avoided costs must be

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35 <sup>1</sup> *In the Matter of PUBLIC Utility COMMISSION OF OREGON Investigation into Qualifying*  
36 *Facility Contracting and Pricing*, Order No. 14-058 at 21, *citing Pioneer Wind Park I, LLC* 145  
37 FERC ¶ 61,125 at 38.

38 <sup>2</sup> Order No. 14-058 at 22.

1 assigned to the QF in order to comport with Public Utility Regulatory Policy Act (PURPA)  
2 avoided cost principles.<sup>3</sup>

3 The Commission did not determine how to assign such costs, noting that Staff and the  
4 parties did not fully address how to calculate and assign the third-party transmission costs that  
5 are attributable to the QF. The Commission deferred issues related to the allocation of costs to  
6 the next phase of Docket No. UM 1610, stating that “[w]e anticipate asking parties to  
7 recommend how third-party transmission costs to transport QF output from receipt in a load  
8 pocket to load should be accounted for in standard contracts; for example, by lowering avoided  
9 standard avoided cost rates, separately in interconnection cost assessments, through an  
10 addendum as suggested by Pacific Power, or by some other means.”<sup>4</sup>

11 In Phase II of Docket No. UM 1610, Staff, the Renewable Energy Coalition (REC), and  
12 the Oregon Department of Energy (ODOE), testified that it is important to have transparency in  
13 any allocation of the costs to move QF generation out of a load pocket. These parties asserted  
14 that to facilitate this transparency, PacifiCorp should be required to supply information about  
15 where load pockets exist on their system and what transmission options may be available to  
16 move the generation.<sup>5</sup> PacifiCorp opposed the proposal to map potential load pockets in its  
17 service territory and make such information available to prospective QFs, noting that load  
18 pockets are dynamic and that PacifiCorp’s merchant function was not necessarily equipped to  
19 provide such information.

20 PacifiCorp’s proposal regarding disposition of costs to move QF generation out of a load  
21 pocket was that PacifiCorp would “procure long-term, firm, point-to-point transmission for the  
22 entire term of the PPA and assign costs assigned to the QF through a PPA addendum” when  
23 PacifiCorp determined transmission was necessary.<sup>6</sup>

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26 <sup>3</sup> Order No. 14-058 at 22.

<sup>4</sup> Order No. 14-058 at 22-23.

<sup>5</sup> See UM 1610 Phase II Staff/600, Andrus/28-30.

<sup>6</sup> UM 1610 Phase II, Order No. 16-174 at 28.

1 Staff opposed PacifiCorp’s proposal. Staff referenced PacifiCorp’s testimony that load  
2 pockets are dynamic and can change if load locates to the area or other changes occur. Staff was  
3 concerned that PacifiCorp’s proposal to require QFs to pay for third-party transmission service  
4 that may not be needed in the later years of the contract was too inflexible and asked the  
5 Commission to defer resolving the issue to allow parties to explore alternative methods of  
6 allocating costs.<sup>7</sup> Staff was also concerned about the lack of transparency as to what  
7 circumstances would trigger the need to acquire transmission and allocate costs and the lack of  
8 oversight over the amounts allocated.

9 In its final order addressing Phase II issues, the Commission noted that it appeared the  
10 parties were close to agreeing to a methodology and directed staff and utilities to work with  
11 parties to resolve how to assign third party costs.<sup>8</sup>

12 The parties were not able to come to agreement on how to allocate costs to transmit QF  
13 generation out of a load pocket. The administrative law judge (ALJ) held a prehearing  
14 conference on November 14, 2016, to establish a procedural schedule to resolve the issues  
15 remaining in the docket.<sup>9</sup> The ALJ established such a schedule, which called for among other  
16 things, PacifiCorp testimony in January 2017 and Staff and intervenor testimony in March 2017.

17 PacifiCorp filed testimony on January 20, 2017. In the testimony, PacifiCorp explained  
18 that the “very specific and narrow context in which the issue of allocating third-party  
19 transmission costs arises when a QF wants to locate in a load pocket and PacifiCorp  
20 Transmission informs PacifiCorp Energy Services Merchant (ESM) that it can only reliably  
21 accommodate ESM’s request if the QF power in excess of local load is transmitted out of the  
22 load pocket on firm, third-party transmission.”<sup>10</sup> PacifiCorp proposed that in this circumstance,  
23 it would obtain long-term, firm transmission to deliver QF power during the full term of the PPA  
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26 <sup>7</sup> UM 1610 Phase II Staff Brief at 18-19 (October 13, 2015).

<sup>8</sup> Order No. 16-174 at 30.

<sup>9</sup> UM 1610 Prehearing Conference memorandum (December 5, 2016).

<sup>10</sup> PAC/1700, Griswold/14.

1 to reliably serve its load and allocate the costs to the QF in an addendum to the power purchase  
2 agreement with the QF.<sup>11</sup>

3 Neither Staff nor intervenors have yet filed testimony in this phase of the docket.

4 **III. PacifiCorp's Motion to Close Docket.**

5 PacifiCorp seeks dismissal of this docket, proposing to “prospectively discontinue  
6 allocating the third-party transmission costs at issue in this proceeding to QFs, should those costs  
7 be incurred.”<sup>12</sup> PacifiCorp asserts the need for third-party transmission to move QF generation  
8 that it anticipated when it made the Advice Filing docketed as Docket No. UE 235 has not  
9 materialized.<sup>13</sup> PacifiCorp states that it has spent a “disproportionately significant amount of  
10 resources” to participate in this proceeding and that it does not believe it is appropriate to address  
11 a utility-specific issue in this generic docket.<sup>14</sup>

12 Staff opposes PacifiCorp's request to close this docket. PacifiCorp's assertions regarding  
13 cost and use of a generic investigation to investigate a utility-specific issue are not well taken.  
14 The question of how to allocate third-party transmission costs has been a utility-specific issue  
15 since this docket opened. It makes little sense to close the investigation into the issue now, after  
16 several years have passed and considerable resources have been expended, on the ground it is not  
17 appropriate to consider a utility-specific issue in a generic investigation.

18 PacifiCorp's assertion regarding the disproportionate share of resources it is spending in  
19 this matter also does not support dismissal. PacifiCorp initiated the Commission's investigation  
20 of this issue. QFs have made clear that allocation of third-party transmission costs is a significant  
21 matter and they have spent considerable resources as well. PacifiCorp's proposed resolution of  
22 this docket would not prevent PacifiCorp from attempting to allocate third-party transmission  
23 costs in the future. Meaning, the resources that all the parties have used so far in this docket  
24 would be for nothing.

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<sup>11</sup> PAC/1700, Griswold/17-18.

26 <sup>12</sup> PacifiCorp's Motion to Close Docket 1.

<sup>13</sup> PacifiCorp's Motion to Close Docket. 5-6.

<sup>14</sup> PacifiCorp's Motion to Close Docket at 8-9.

1 More importantly, PacifiCorp's promise to not allocate third-party transmission costs to  
2 QFs in the future does not mean much if there is no Commission order that would require  
3 PacifiCorp to adhere to this promise. In any event, even if PacifiCorp does not plan to allocate  
4 third-party transmission costs in the future, Staff believes it is appropriate for the Commission to  
5 finalize this lengthy investigation and adopt a methodology for determining when such costs are  
6 appropriately assigned to a QF and how. Such an order would provide certainty to QFs and  
7 PacifiCorp and protection in the event a QF or PacifiCorp does not follow the methodology in  
8 the future.

9 Although it is not clear that this belief prompted the request to close the docket,  
10 PacifiCorp apparently believes it does not need a Commission-approved methodology to assign  
11 third-party transmission costs to a QF executing a standard contract. PacifiCorp states in its  
12 motion that it has had to allocate third-party transmission costs to QFs in only a handful of  
13 circumstances.<sup>15</sup> Each of the four QFs to which PacifiCorp has assigned third-party transmission  
14 costs executed a standard contract. However, it is not clear to Staff on what authority PacifiCorp  
15 has relied on to allocate third-party transmission costs to QFs executing standard contracts.

16 As already noted, PacifiCorp proposes in this docket to assign third-party transmission  
17 costs to a QF seeking a standard contract with an addendum to the standard contract. The  
18 Commission has not yet adopted this proposal. Notwithstanding that the Commission has not  
19 expressly authorized PacifiCorp to allocate third-party transmission costs with an addendum to  
20 the standard contract this is precisely how PacifiCorp assigned costs to QFs that executed  
21 standard contracts in 2014.<sup>16</sup>

22 These circumstances leave Staff believes it is necessary for the Commission to determine  
23 the methodology for assigning the costs and also, to determine under what circumstances it is  
24 appropriate to apply the methodology. The parties have done considerable work in this docket

25 <sup>15</sup> PacifiCorp Motion to Close Docket 6-7.

26 <sup>16</sup> See Attachment A (Excerpt of PPA between Adams Solar Center LLC and PacifiCorp and  
Addendum B); and Attachment B (Excerpt of PPA between Elbe Solar Center LLC and  
PacifiCorp and Addendum B).

1 ton these issues already. It makes little sense to abandon these efforts at this late state of the  
2 proceeding.

3 Staff does not take a position in this response on the merit of PacifiCorp's proposed  
4 methodology, but plans to do so in testimony. Staff asks that the ALJ deny the motion to close  
5 the docket and re-instate a procedural schedule to allow final resolution of this docket. Staff  
6 disagrees with PacifiCorp that it is necessary to allow legal briefing on the scope of the  
7 proceeding.

8 **IV. Conclusion.**

9 Staff asks that the ALJ deny PacifiCorp's Motion to Close Docket and reinstate a  
10 procedural schedule.

11

12 DATED this 30 day of March 2017.

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Respectfully submitted,

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ELLEN F. ROSENBLUM  
Attorney General

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Stephanie S. Andrus  
Senior Assistant Attorney General  
Of Attorneys for Staff of the Public Utility  
Commission of Oregon

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**POWER PURCHASE AGREEMENT**

**BETWEEN**

**ADAMS SOLAR CENTER, LLC**

**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and  
not an Intermittent Resource]**

**AND**

**PACIFICORP**

Section 1: Definitions .....	2
Section 2: Term; Commercial Operation Date .....	6
Section 3: Representations and Warranties .....	6
Section 4: Delivery of Power .....	9
Section 5: Purchase Prices.....	10
Section 6: Operation and Control .....	11
Section 7: Fuel/Motive Force .....	12
Section 8: Metering .....	12
Section 9: Billings, Computations, and Payments.....	13
Section 10: Security.....	13
Section 11: Defaults and Remedies .....	16
Section 12: Indemnification and Liability .....	19
Section 13: Insurance ( <i>Facilities over 200kW only</i> ).....	20
Section 14: Force Majeure.....	21
Section 15: Several Obligations .....	21
Section 16: Choice of Law .....	22
Section 17: Partial Invalidity .....	22
Section 18: Waiver .....	22
Section 19: Governmental Jurisdictions and Authorizations.....	22
Section 20: Repeal of PURPA.....	22
Section 21: Successors and Assigns .....	22
Section 22: Entire Agreement .....	23
Section 23: Notices.....	23

**ADDENDUM B**  
**Transmission Services**

PacifiCorp and Adams Solar Center, LLC ("Adams") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum B to the PPA is entered into by and between PacifiCorp and Adams and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in exporting excess generation from the Adams Facility when Adams generation exceeds load in the Madras area ("Excess Generation");

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

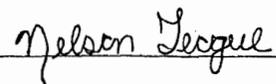
PacifiCorp will contract with Portland General Electric ("PGE") per PGE's Open Access Transmission Tariff ("OATT") to purchase ten (10) megawatts of firm point-to-point ("PTP") transmission in five (5) year increments for the Term to export Excess Generation out of the Madras area from the Adams Facility to Round Butte substation.

PacifiCorp will contract with Bonneville Power Administration ("BPA") per BPA's OATT to purchase ten (10) megawatts of firm PTP transmission in five (5) year increments for the Term to deliver Excess Generation to PacifiCorp from Round Butte substation to the Redmond 115 kV substation.

Adams will pay all costs incurred by PacifiCorp to secure transmission service from both PGE and BPA for exporting Excess Generation. Over the Term as the PGE and BPA OATT prices and/or terms change PacifiCorp will update its transmission wheeling expense and billing to Adams. The transmission wheeling expense will be deducted monthly from the Adams PPA payments (an example of the monthly billing and settlement is contained in Exhibit B-1).

This Addendum B to the PPA is made effective this 7<sup>th</sup> day of August, 2014.

PacifiCorp  
By:   
Name: Bruce Griswold  
Title: Director, Short-Term Origination  
and QF Contracts  
Date: 8/7/2014  
BWS 8-7-2014

Adams Solar Center, LLC  
By:   
Name: Nelson Teague  
Title: Manager  
Date: 08/12/14

## ADDENDUM B--Ctd

### Exhibit B-1 Monthly Billing and Settlement for PTP Transmission Reimbursement

	A	B	C	D = C - A - B
	PTP Transmission			
Month	PGE(1)	BPA (2)	Generation Payment (3)	Final Settlement for Billing (4)
January	\$5,358.00	\$17,360.00	\$37,422.52	
February	\$5,358.00	\$17,360.00	\$50,651.50	\$14,704.52
March	\$5,358.00	\$17,360.00	\$87,597.30	\$27,933.50
April	\$5,358.00	\$17,360.00	\$118,703.28	\$64,879.30
May	\$5,358.00	\$17,360.00	\$144,029.03	\$95,985.28
June	\$5,358.00	\$17,360.00	\$164,051.27	\$121,311.03
July				\$141,333.27

- (1) PGE bills PacifiCorp on the 1st of each month for the prior month's expense (i.e., billed January 1 for PTP for December). Payment is due on the 20<sup>th</sup>. PGE charges are subject to change and the charges below are for example only per PGE's current OATT.

<u>PGE Charges</u>	<u>\$/KW-Month</u>
Long Term PTP	523.33
Sch, Sys Control, Disp	12.49
Total	535.82

Project Size (KW)	10,000
Monthly Cost	\$5,358

- (2) BPA bills PacifiCorp on the 1st of each month for the prior month's expense (i.e., billed January 1 for PTP for December). Payment is due on the 20<sup>th</sup>. BPA charges are subject to change and the charges below are for example only per BPA's current OATT.

<u>BPA Charges</u>	<u>\$/KW-Month</u>
Long Term PTP	\$1.479
Sch, Sys Control, Disp	\$0.257
Total	\$1.736

Project Size (KW)	10,000
Monthly Cost	\$17,360

- (3) PacifiCorp pays for generation on or before the 30th day after the billing period. PacifiCorp will make a transmission payment to BPA and PGE on the 20th of each month.
- (4) PacifiCorp will subtract the PGE and BPA payment from the payment to Adams for Net Output for the same billing period.

The table above demonstrates the netting of the PGE and BPA PTP wheeling expense against the PPA payment to Seller for generation. For example, February's PPA payment of \$32,064.52 is determined by subtracting the January PTP Transmission of \$5,358.00 and \$17,360.00 from the January Generation Payment of \$37,422.52.

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**ELBE SOLAR CENTER, LLC**

**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and  
not an Intermittent Resource]**

**AND**

**PACIFICORP**

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**ADDENDUM B**  
**Transmission Services**

PacifiCorp and Elbe Solar Center, LLC ("Elbe") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum B to the PPA is entered into by and between PacifiCorp and Elbe and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in exporting excess generation from the Elbe Facility when Elbe generation exceeds load in the Madras area ("Excess Generation");

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

PacifiCorp will contract with Portland General Electric ("PGE") per PGE's Open Access Transmission Tariff ("OATT") to purchase ten (10) megawatts of firm point-to-point ("PTP") transmission in five (5) year increments for the Term to export Excess Generation out of the Madras area from the Elbe Facility to Round Butte substation.

PacifiCorp will contract with Bonneville Power Administration ("BPA") per BPA's OATT to purchase ten (10) megawatts of firm PTP transmission in five (5) year increments for the Term to deliver Excess Generation to PacifiCorp from Round Butte substation to the Redmond 115 kV substation.

Elbe will pay all costs incurred by PacifiCorp to secure transmission service from both PGE and BPA for exporting Excess Generation. Over the Term as the PGE and BPA OATT prices and/or terms change PacifiCorp will update its transmission wheeling expense and billing to Elbe. The transmission wheeling expense will be deducted monthly from the Elbe PPA payments (an example of the monthly billing and settlement is contained in Exhibit B-1).

This Addendum B to the PPA is made effective this 7<sup>th</sup> day of August, 2014.

PacifiCorp

Elbe Solar Center, LLC

By: \_\_\_\_\_

By: Nelson Teague

Name: Bruce Griswold

Name: Nelson Teague

Title: Director, Short-Term Origination  
and OF Contracts

Title: Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

8/7/2014  
BWS 8-7-2014

## ADDENDUM B--Ctd

### Exhibit B-1 Monthly Billing and Settlement for PTP Transmission Reimbursement

	A	B	C	D = C - A - B
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June	\$5,358.00	\$17,360.00	\$164,051.27	\$121,311.03
July				\$141,333.27

- (1) PGE bills PacifiCorp on the 1st of each month for the prior month's expense (i.e., billed January 1 for PTP for December). Payment is due on the 20<sup>th</sup>. PGE charges are subject to change and the charges below are for example only per PGE's current OATT.

<u>PGE Charges</u>	<u>\$/KW-Month</u>
Long Term PTP	523.33
Sch, Sys Control, Disp	12.49
Total	535.82
 Project Size (KW)	 10,000
Monthly Cost	\$5,358

- (2) BPA bills PacifiCorp on the 1st of each month for the prior month's expense (i.e., billed January 1 for PTP for December). Payment is due on the 20<sup>th</sup>. BPA charges are subject to change and the charges below are for example only per BPA's current OATT.

<u>BPA Charges</u>	<u>\$/KW-Month</u>
Long Term PTP	\$1.479
Sch, Sys Control, Disp	\$0.257
Total	\$1.736
 Project Size (KW)	 10,000
Monthly Cost	\$17,360

- (3) PacifiCorp pays for generation on or before the 30th day after the billing period. PacifiCorp will make a transmission payment to BPA and PGE on the 20th of each month.
- (4) PacifiCorp will subtract the PGE and BPA payment from the payment to Elbe for Net Output for the same billing period.

The table above demonstrates the netting of the PGE and BPA PTP wheeling expense against the PPA payment to Seller for generation. For example, February's PPA payment of \$32,064.52 is determined by subtracting the January PTP Transmission of \$5,358.00 and \$17,360.00 from the January Generation Payment of \$37,422.52.