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September 29, 2016

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-1166

Attn: Filing Center

**Re: UM 1610 – PacifiCorp’s Response to Motion to Compel**

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Response to the Renewable Energy Coalition’s Motion to Compel.

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

Sincerely,

A handwritten signature in black ink that reads "R. Bryce Dalley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

R. Bryce Dalley  
Vice President, Regulation

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1610  
Phase II

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON

Investigation Into Qualifying Facility  
Contracting and Pricing.

PACIFICORP'S RESPONSE TO  
MOTION TO COMPEL

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) files this response to the Renewable Energy Coalition's (REC) Motion to Compel. The only remaining issue in this proceeding is how to calculate and assign third-party transmission costs attributable to a qualifying facility (QF) in Oregon. REC's overly broad and unreasonably burdensome data requests seek information that is not relevant to this very narrow issue, and its Motion to Compel should be denied.

On September 12, 2016, PacifiCorp requested a conference to facilitate the resolution of this dispute as permitted by OAR 860-001-0500(6). On September 13, 2016, the Administrative Law Judge (ALJ) provided notice of an expedited telephone conference to be held on September 15, 2016. After this conference was scheduled, but less than 24 hours before the conference occurred, REC filed its Motion to Compel. PacifiCorp believed this discovery dispute could have been resolved through the scheduled conference, but PacifiCorp's efforts to efficiently resolve this dispute were undermined by the timing of REC's motion.

For the reasons discussed below, PacifiCorp respectfully requests that the Public Utility Commission of Oregon (Commission) deny REC's Motion to Compel.

## I. INTRODUCTION

The remaining issue in this proceeding involves any third-party transmission costs associated with moving a QF's output from a load pocket to another load area on the utility's system. A load pocket is a situation where there is insufficient load to absorb a QF's output. In Order No. 14-058, the Commission ruled that "any costs imposed on a utility that are above the utility's avoided costs must be assigned to the QF in order to comport with PURPA avoided cost principles."<sup>1</sup> In Order No. 16-174, the Commission directed parties to work together to resolve how to calculate and assign third-party transmission costs attributable to a QF in load pockets.<sup>2</sup>

PacifiCorp has stated that it must procure long-term, firm transmission arrangements to deliver QF power in order to remain compliant with both PURPA's mandatory purchase obligation and FERC precedent.<sup>3</sup> This mandatory purchase obligation makes QFs different than all other designated network resources of a utility where the utility has the option to dispatch or not.<sup>4</sup> It is not the QF's option to choose the transmission type, but rather, the utility has the mandatory obligation to acquire firm transmission service from the QF's point of delivery to load.<sup>5</sup>

As detailed in PacifiCorp's prehearing brief in this proceeding, contracting for transmission arrangements with a FERC-jurisdictional transmission provider is highly regulated and governed by federal rules.<sup>6</sup> All of FERC's rules governing the provision of transmission service apply to this transaction. In securing this transmission, the merchant function must act in accordance with the terms and conditions of the transmission provider's open access transmission tariff (OATT).

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<sup>1</sup> *In re Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 22 (Feb. 24, 2014).

<sup>2</sup> *In re Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016).

<sup>3</sup> *In re Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, PacifiCorp Prehearing Brief at 53-54 (Sept. 2, 2015).

<sup>4</sup> PAC/1600, Griswold/7.

<sup>5</sup> PAC/1600, Griswold/4.

<sup>6</sup> PacifiCorp Prehearing Brief at 50.

PacifiCorp must secure long-term firm transmission to deliver QF power during the length of the power purchase agreement (PPA) and to reliably serve load.<sup>7</sup> In order to secure transmission for the entire term of the PPA, FERC policies require a transmission customer to make a minimum five-year commitment in order to obtain renewal rights to that transmission capacity after the initial service agreement expires.<sup>8</sup> Without this commitment, PacifiCorp's transmission rights could be displaced during the term of a QF's PPA. Procuring non-firm transmission for QFs presents an even higher risk of displacement which makes it inappropriate to use as a transmission service that PacifiCorp can count on to deliver the QF's power for the entire term of the PPA.<sup>9</sup>

PacifiCorp has serious concerns regarding suggestions that it be required to use curtailment as an alternative to purchasing long-term, firm transmission service.<sup>10</sup> FERC precedent prohibits the curtailment of QF resources except under two very narrow circumstances: (1) system emergencies and (2) extreme light loading conditions.<sup>11</sup>

## II. LEGAL STANDARD

Under the Oregon Rules of Civil Procedure (ORCP), “parties may inquire regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party.”<sup>12</sup> Relevant evidence must tend to make the existence of any fact at issue in the proceeding more or less probable than it would be without the evidence; and be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious

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<sup>7</sup> *Id.* at 53.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 54; PAC/1300, Griswold 18; PAC/1600, Griswold/7-8.

<sup>11</sup> PacifiCorp Prehearing Brief at 54-55.

<sup>12</sup> ORCP 36 B(1). The Oregon Rules of Civil Procedure apply in Commission contested case and declaratory ruling proceedings unless inconsistent with Commission rules, a Commission order, or an Administrative Law Judge ruling. *See* OAR 860-001-0000(1).

affairs.<sup>13</sup> The Oregon courts and the Commission have affirmed that the information sought in discovery must be reasonably calculated to lead to the discovery of admissible evidence.<sup>14</sup>

### III. ARGUMENT

#### A. Information Regarding the Transmission Arrangements and Curtailment Rights for Non-QF Resources is Irrelevant to the Question of How to Calculate and Assign Third-Party Transmission Costs Attributable to a QF.

REC unreasonably seeks to compel PacifiCorp to produce information regarding the transmission arrangements and curtailment rights for non-QF resources. REC asks PacifiCorp to identify the types of third-party transmission arrangements the Company uses to wheel its own generation to load in its western control area, “including but not limited to transmission purchases under the Open Access Transmission Tariff (OATT), general transfer agreements, exchange agreements, use of facilities agreements, etc.” (REC Data Request 11.7). REC seeks “each PPA between PacifiCorp and a counter party selling electrical output to PacifiCorp from a cogeneration, or renewable facility as an exempt wholesale generator (i.e. projects that are not selling as QFs and covered under request 11.1)” (REC Data Request 11.9). It also asks the Company to identify the transmission utilized for all of the Company’s front office transactions for the last three years (REC Data Request 11.12). Additionally, REC asks the Company to “identify the amount of load and/or generation that uses third-party transmission to be wheeled between non-contiguous portions of PacifiCorp’s service territory” (REC Data Request 12.2).

REC’s requests for the Company’s transmission arrangements associated with non-QF resources are overly broad, unduly burdensome, outside the scope of this proceeding, and unlikely to lead to the discovery of admissible evidence. The remaining issue in this proceeding relates to securing and assigning third-party transmission costs for QFs in Oregon. REC is engaged in a wide-spread fishing expedition into the Company’s generating resources, front office transactions, and

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<sup>13</sup> OAR 860-001-0450.

<sup>14</sup> See *Baker v. English*, 324 Or. 585, 588 n.3 (1997); *In re Portland Extended Area Service Region*, Docket No. UM 261, Order No. 91-958 at 5 (Jul. 31, 1991).

non-QF PPAs. These non-QF PPAs are not subject to the same federal regulatory requirements under PURPA. As discussed previously, the utility's mandatory purchase obligation makes QFs different than all other designated network resources of a utility.

At this point in this multi-phased proceeding, REC should be aware of the OATT-based products available to QFs and should not need to engage in the wide-spread, multi-state search for "unusual delivery arrangements."<sup>15</sup> Much of this information is publicly available in each FERC-jurisdictional transmission provider's OATT and Open Access Same-Time Information System (OASIS) webpage.

During this proceeding, PacifiCorp has gone to great lengths to explain why it must secure long-term firm transmission to ensure compliance with FERC and PURPA rules. PacifiCorp is not discriminating against QFs by pointing out that the PURPA requirements only apply to QFs. As PacifiCorp has explained, the Company must purchase long-term firm transmission to ensure firm third-party transmission service will remain available over the term of the QF's PPA.<sup>16</sup> This ensures that the Company can deliver the QF's output to load on a long-term firm basis.

REC's arguments that it should receive information on all transmission arrangements and curtailment rights for non-QF resources are unavailing. In its Motion to Compel, REC explains that information regarding non-QF generation is relevant because it "could allow REC to identify the types of transmission used to wheel the Company's generation and purchased power to load, its costs, and how avoided cost rates can be adjusted to reflect the wheeling arrangements."<sup>17</sup> QFs have repeatedly argued for consistency and certainty in contracting, and yet REC is attempting to look into "unusual delivery arrangements"<sup>18</sup> rather than trying to develop a consistent policy to ensure QF generation is reliably delivered to load.

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<sup>15</sup> REC Motion to Compel at 7.

<sup>16</sup> PacifiCorp Prehearing Brief at 53.

<sup>17</sup> REC Motion to Compel at 12.

<sup>18</sup> *Id.* at 7.

REC also seeks the Company's curtailment arrangements for each of these PPAs (REC Data Request 11.9). As discussed previously, FERC only allows the curtailment of QF resources under two narrow circumstances: (1) system emergencies and (2) extreme light loading conditions. QFs in load pockets cannot avoid securing the necessary transmission arrangements and instead rely on being curtailed in direct opposition to FERC requirements. Therefore, the curtailment arrangements for non-QF PPAs are not relevant to the curtailment of QF PPAs.

**B. PacifiCorp Should Not Be Required to Provide Commercially Sensitive Information from its Request for Proposals (RFP).**

For each bid in the Company's recent renewable RFP, REC is seeking "copies of the confidential materials discussed at the July 26, 2016 public meeting," and asks the Company to "identify the location of the generation resource, the assumed transmission costs, and whether the resource was located in a load pocket" (REC Data Request 11.8).

REC's request for this information is overly broad, outside the scope of this proceeding, and unlikely to lead to the discovery of admissible evidence. Additionally, REC represents entities that could be competitors for potential future renewable RFPs. Disclosing this information to REC would undermine the competitive nature of these RFPs. In the Company's recent Oregon transition adjustment mechanism proceeding, the Commission did not allow an expert witness on behalf of Noble Americas Energy Solutions to access the confidential RFP materials in part because the expert witness represents entities that could be either competitors for the future purchase of RECs or potential future REC sellers.<sup>19</sup> Similarly, REC represents potential future competitors in an RFP, and therefore, providing this information to REC would compromise the competitive bidding process.

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<sup>19</sup> *In the Matter of PacifiCorp dba Pacific Power, 2017 Transition Adjustment Mechanism*, Docket No. UE 307, Ruling at 1 (Aug. 25, 2016).

**C. QFs Outside of Load Pockets and Non-Oregon QF PPAs are Outside the Scope of Calculating and Assigning Third-Party Transmission Arrangements to QFs in Oregon.**

REC has requested “all copies of PacifiCorp’s PPAs with QFs since the passage of PURPA, including all associated agreements including but not limited to PPA amendments, transmission agreements, wheeling agreements, and settlement agreements” (REC Data Request 11.1). REC also seeks information for each PPA including whether the QF was or is located in a load pocket, the contractual arrangements (if any) associated with wheeling the generation out of the load pocket (REC Data Request 11.2), and any PacifiCorp rights to curtail the generation (REC Data Request 11.3).

QFs that are not located in load pockets are certainly outside the scope of the proceeding because third-party transmission arrangements are not at issue with those QFs. REC has not made any compelling arguments as to how QFs outside of load pockets could possibly be relevant to this proceeding. REC’s assertion that it “should have the opportunity to review the veracity of any PacifiCorp claims”<sup>20</sup> is not a persuasive reason to allow such wide-spread discovery. PPAs and associated agreements with QFs outside of load pockets simply do not raise transmission issues. Therefore, PPAs and associated agreements with QFs that are not located in load pockets have no bearing on the remaining issue in this proceeding.

Non-Oregon QF PPAs and associated agreements for projects located in load pockets are irrelevant to the issue of how to calculate and assign third-party transmission costs for QFs located in load pockets *in Oregon*. Consistent with the prior discussion regarding non-QF PPAs, REC should not be permitted to engage in a widespread, multi-state search for all QF non-Oregon QF PPAs and associated agreements with the hope of finding a QF PPA that has unusual transmission

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<sup>20</sup> REC Motion to Compel at 8. In its motion, REC includes a reference to EBD Hydro, LLC as improperly omitted from PacifiCorp’s response to Data Request 11.1. The output from this QF is absorbed by the load pocket because it was operating before the excess generation condition was created. As discussed in this Response, QF PPAs that do not include third-party transmission arrangements are outside the scope of this proceeding.

arrangements. This proceeding relates to developing policies for Oregon QFs, and PacifiCorp has already stated that it should procure long-term, firm transmission arrangements to deliver QF power in order to remain compliant with both PURPA's mandatory purchase obligation and FERC precedent.

REC is seeking settlement agreements as part of its request (REC Data Request 11.1). It would be inappropriate to require PacifiCorp to produce QF settlement agreements in this proceeding as they are outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Such a requirement would chill the ability of PacifiCorp and parties to enter into settlement agreements in the future.

**D. It is Infeasible for PacifiCorp to Produce the Requested Information Regarding the QFs' Load Pocket Status.**

REC is seeking "the minimum and maximum retail electric load in the non-contiguous portion of PacifiCorp's service territory that the QF serves on an electrical basis" (REC Data Request 12.3). REC asks PacifiCorp to "identify the amount of third-party transmission to wheel additional generation to load and that PacifiCorp would need to purchase if the QF ceased operations" (REC Data Request 12.4).

Throughout this proceeding, PacifiCorp has explained why it does not have the information requested in Data Request 12.3. Much of this information is considered non-public transmission information under the FERC standard of conduct. Therefore, it is only available to the transmission provider and cannot be shared with any party—including PacifiCorp's merchant function—unless or until the OATT studies are performed and made publicly available on the OASIS website. Additionally, this information requested is administratively burdensome to produce.

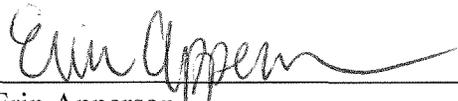
As PacifiCorp explained in its response to Data Request 12.4, PacifiCorp was able to provide information for certain QFs that were recently identified by PacifiCorp Transmission in its Designated Network Resource studies because the information specific to these QFs was provided to

PacifiCorp Merchant, the transmission services customer, so that PacifiCorp Merchant could secure the necessary third-party transmission service to move the generation in excess of the identified minimum retail load out of the load pocket and remove any contingency imposed by PacifiCorp Transmission on the Designated Network Resource. Designated Network Resource studies performed by PacifiCorp Transmission only provide minimum retail load in the event the generation exceeds the load and PacifiCorp Merchant must secure third-party transmission to export the excess generation.

#### IV. CONCLUSION

For the foregoing reasons, PacifiCorp respectfully asks the Commission to deny REC's Motion to Compel.

Respectfully submitted this 29<sup>th</sup> day of September, 2016.

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