

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER THE PUBLIC UTILITY	)	Docket No. UM 1610
COMMISSION OF OREGON	)	
	)	
Investigation Into Qualifying Facility	)	COMMENTS ON PROCEDURAL
Contracting and Pricing	)	SCHEDULE OF COMMUNITY
	)	RENEWABLE ENERGY ASSOCIATION
	)	AND THE RENEWABLE ENERGY
	)	COALITION

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The Community Renewable Energy Association (“CREA”) and the Renewable Energy Coalition (“REC”) (collectively the “Joint QF Parties”) respectfully submit their comments on the procedural schedule for the remainder of this docket before the Public Utility Commission of Oregon (“Commission”).

**BACKGROUND**

The only remaining issue in this proceeding is an outstanding question with respect to treatment of qualifying facilities (“QFs”) PacifiCorp finds to be located in a “load pocket.” Specifically, in its Order No. 20-064, the Commission adopted PacifiCorp’s revised rate schedule and standard contract provisions on this subject but also directed as follows:

We also direct Staff to work with parties and the Administrative Hearings Division to find a vehicle for a brief examination on the limited question of whether the designation of a Qualifying Facility (QF) as a network resource under PacifiCorp’s network integration transmission service agreement with BPA represents an opportunity for PacifiCorp to avoid incremental transmission costs related to a QF that is in a load pocket.

The question is important because, unlike the use of BPA point-to-point transmission, the BPA NITSA imposes no incremental transmission costs on PacifiCorp if it could be used to solve a load pocket issue for a QF.

At the prehearing conference, the parties were unfortunately unable to agree to a procedural schedule, in part due to a threshold disagreement as to whether the question at issue is purely legal or also implicates any facts. Thus, Administrative Law Judge Tracie Kirkpatrick directed parties to “file written comments addressing the nature of the question, and how it can best be answered.” *ALJ Ruling*, Docket No. UM 1610 (April 16, 2020).

### **ARGUMENT**

In response to ALJ Kirkpatrick’s request, the Joint QF Parties submit that the question posed by the Commission presents a mixed question of fact and law. As we understand PacifiCorp’s latest position, which was expressed for the first time at the public meeting on February 25, 2020, PacifiCorp believes that it would be illegal for PacifiCorp to designate a QF as a network resource under PacifiCorp’s network transmission service agreement (“NITSA”) with BPA. As argued by PacifiCorp, such designation would result in a double designation as a network resource under both the BPA NITSA and the separate NITSA with PacifiCorp Transmission, and thus the BPA NITSA could not be used for PacifiCorp-owned or QF generation used to serve PacifiCorp loads.

Despite PacifiCorp’s new legal argument, there are also factual issues implicated by the Commission’s question that would have to be answered to fully respond to the Commission’s question. PacifiCorp has admitted in discovery in this proceeding that it has used the BPA NITSA to move Oregon QFs’ generation between load pockets and further conceded it regularly uses the BPA NITSA to transmit PacifiCorp-owned generation out of load pockets. *See Joint QF Parties’ July 29th Objection* at 12-14 & Attachment 1 at pp. 1-8. Accordingly, at a minimum, an adequate answer to the Commission’s question would require some factual

response as to why PacifiCorp’s previous use of its BPA NITSA was not an unlawful double  
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designation under the BPA NITSA and the PacifiCorp Transmission NITSA. It would likewise require factual confirmation that PacifiCorp no longer uses the BPA NITSA for the purposes that are now alleged to be illegal – which in turn raises the logical factual question as to what purpose PacifiCorp does use the BPA NITSA. This could easily entail a very extensive additional factual inquiry beyond what has already occurred.

However, the Commission sought a “brief examination” of the question at hand in Order No. 20-064, and it may not be possible to ascertain all necessary facts in a brief examination regarding PacifiCorp’s use of its BPA NITSA. Accordingly, the Joint QF Parties believe the Commission could appropriately close the docket without further order on the question so long as the Commission makes clear that individual QFs may argue in the future, through a complaint or otherwise, that PacifiCorp should have considered use of the BPA NITSA instead of BPA point-to-point transmission to resolve a load pocket issue – just as PacifiCorp has stated in discovery that it has done in the past.

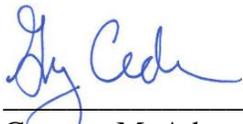
On the other hand, if the Commission would like to attempt to obtain formal resolution through a brief examination of the question, the Joint QF Parties recommend that the parties could address the Commission’s question through legal briefing that relies on the existing facts that are already established through PacifiCorp’s discovery responses on its use of the BPA NITSA. Assuming PacifiCorp will be bound by its existing discovery responses, other parties will not be prejudiced by any new facts that might be alleged without the extensive investigation that would be necessary to verify and, if necessary, challenge any new factual assertions.

Given PacifiCorp’s new legal argument has not yet been presented in writing, PacifiCorp should lead with a legal brief to which intervenors and Staff may respond. After briefing, the Commission can determine whether to issue an order resolving the question or decide to close

the docket because the record cannot be sufficiently developed through a brief investigation, and in doing so could preserve the rights of individual QFs to raise the issue in the future.

Dated: April 30, 2020.

Respectfully submitted,



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