

April 30, 2020

VIA ELECTRONIC FILING

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

Attn: Filing Center

RE: UM 1610 – PacifiCorp’s Comments on Nature of Issue

PacifiCorp d/b/a Pacific Power encloses for filing its Comments on Nature of Issue in the above-referenced docket.

Informal inquiries may be directed to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,



Michael Wilding
Director, Regulation

Enclosures

**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 COMMENTS ON
NATURE OF ISSUE**

Pursuant to Administrative Law Judge Traci Kirkpatrick's Telephone Prehearing Conference Memorandum dated April 16, 2020, PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) submits these comments regarding whether the last remaining question posed by the Public Utility Commission of Oregon (Commission) for brief examination in this docket is primarily legal or factual in nature. The limited question is whether the designation of a qualifying facility (QF) as a network resource under PacifiCorp's network integration transmission service agreement with the Bonneville Power Administration (BPA) represents an opportunity for PacifiCorp to avoid incremental transmission costs related to a QF that is in a load pocket. This question is primarily, if not exclusively, a legal question and therefore PacifiCorp recommends that the brief examination ordered by the Commission include only legal briefing or comments, not a full contested case process.

I. DISCUSSION

In Order No. 20-064,¹ the Commission approved the Company's third amended compliance filing revising its QF tariffs and standard contract language to accommodate two

¹ *In the Matter of Pub. Util. Comm'n of Or. Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order 20-064 at 1 (Mar. 3, 2020).

methods of allocating costs to QFs that site in load pockets and that require incremental transmission service arrangements on a third-party transmission system, such as the BPA transmission system.² In addition, the Commission asked Staff and the parties to conduct a “*brief examination*” of the following “*limited question*”:

... whether the designation of a Qualifying Facility (QF) as a network resource under PacifiCorp’s network integration transmission service agreement with [Bonneville Power Authority (BPA)] represents an opportunity for PacifiCorp to avoid incremental transmission costs related to a QF that is in a load pocket.³

Following the Commission’s Order No. 20-064, a prehearing conference was held on April 16, 2020, to set a schedule to address this limited question. At the prehearing conference, a question arose regarding whether the limited issue to be examined is:

(1) primarily legal, requiring briefing or submission of comments only, as proposed by PacifiCorp; or (2) primarily factual, requiring extensive discovery, including depositions, testimony, and a full contested case process as proposed by the Renewable Energy Coalition (REC) and the Community Renewable Energy Association (CREA).

As explained below, the limited question posed by the Commission is legal in nature and can be resolved without an evidentiary record and a full contested case. Therefore, consistent with the Commission’s direction at the February 25, 2020 public meeting, as reflected in Order No. 20-064, for a brief examination, PacifiCorp respectfully requests that the Commission set a procedural schedule requiring Staff and the parties to file briefs or comments. A full contested case, as requested by REC and CREA, is both unnecessary given

² Third-party transmission arrangements could also be necessary on other third-party systems, such as the Portland General Electric transmission system, but this document will refer to the BPA system for easy of reference and consistency with the Commission’s order.

³ *Id.*

the legal nature of the issue and contrary to the Commission's desire for an expedited resolution of the issue.

PacifiCorp's approved compliance filing proposed, generally speaking, two mechanisms for charging QFs for a single type of transmission service—*point-to-point* transmission service—arranged on BPA's transmission system. In response to PacifiCorp's compliance filing, REC and CREA argued that PacifiCorp could avoid the need to arrange any point-to-point transmission service (and therefore the assessment of any point-to-point transmission charges) altogether if PacifiCorp simply used a different type of transmission service—*network* transmission service—on BPA's transmission system. PacifiCorp argued such an evaluation was outside the scope of the prior orders and could not be raised during the compliance phase of this proceeding.

During the February 25, 2020 public meeting, the Commission discussed whether the previous orders in this docket: (1) identified that point-to-point transmission service would be used on BPA's system after an examination of the alternative possibility of using network transmission service on BPA's system; or (2) were based on a foundational assumption that point-to-point service was the only option, with use of network transmission on BPA's system left unexamined.

PacifiCorp explained why it believed that the BPA network transmission alternative was examined and appropriately eliminated as a feasible option early on in the proceeding. Setting aside compliance-stage scope issues, PacifiCorp also provided an extensive explanation for why using network transmission service on BPA's system as REC and CREA have suggested would either (1) fail to comport with Federal Energy Regulatory Commission (FERC) policy and precedent; or (2) if structured to be consistent with FERC rules, fail to

prevent the assessment of point-to-point charges to QFs in any event. PacifiCorp also explained why certain 2016 PacifiCorp discovery responses do not provide the evidentiary support that REC and CREA have previously alleged.

The Commission ultimately determined that brief additional process on this discrete issue would allow Staff and parties to respond to the substantive explanation of the reasons that, in PacifiCorp's view, using network transmission service on BPA's system does not represent an opportunity for PacifiCorp to avoid incremental transmission costs related to a QF sited in a load pocket. The Commission additionally recognized that PacifiCorp itself may be interested in filing additional detail on and supporting citation for the description it provided during the February 25, 2020 public meeting.

To give a sense for this additional detail and citation, PacifiCorp would offer briefing or comments reviewing the key sections of PacifiCorp's open access transmission tariff (OATT), BPA's OATT, and FERC precedent that would prevent the use of BPA network transmission as proposed by REC and CREA. These are issues of federal law and policy. PacifiCorp would also offer additional detail on certain 2016 PacifiCorp discovery responses that have led to confusion in this proceeding. This additional detail would clarify—not expand—the existing record.

REC and CREA have taken the position that the brief examination described by the Commission should involve extensive data requests, depositions, written testimony, and presumably a full evidentiary hearing. It is unclear to PacifiCorp what the intended goal of such an exhaustive discovery process would be, particularly given that it would be ultimately rendered moot if REC and CREA's proposal is prohibited under federal law, as PacifiCorp has argued. The Commission's requested review of a limited question should not be used as

an opportunity to reopen the record and unravel the decisions the Commission has made in this multi-year investigation into QF contracting and pricing. Given the nature of the question, which is primarily legal, it is appropriate that the brief examination be conducted through briefing or submission of comments.

II. CONCLUSION

In light of the foregoing, it would be most consistent with the Commission's February 25, 2020 deliberations to adopt a schedule allowing for PacifiCorp to provide an opening brief or comments offering additional detail on its above-referenced public meeting description, followed by reply briefs or comments by Staff or other parties, and finally a PacifiCorp responsive brief or comments.

Respectfully submitted this 30th day of April, 2020, on behalf of PacifiCorp.



Carla Scarsella
Carla Scarsella
PacifiCorp
825 NE Multnomah Street, Suite 2000
Portland, OR 97232
carla.scarsella@pacificorp.com

Counsel for PacifiCorp d/b/a/ Pacific
Power