

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 374

In the Matter of
PACIFICORP d/b/a PACIFIC POWER'S
Request for a General Rate Revision.

VITESSE LLC'S APPLICATION
FOR RECONSIDERATION AND
CLARIFICATION OF
ORDER NO. 20-473

I. INTRODUCTION

Vitesse LLC ("Vitesse") submits this Application for Reconsideration and Clarification pursuant to ORS 756.561 and OAR 860-001-0720, asking the Oregon Public Utility Commission (the "Commission") to clarify and potentially reconsider Order No. 20-473 in Docket No. UE 374 as it pertains to the continued use of PacifiCorp d/b/a Pacific Power's ("PacifiCorp's") Schedule 272 tariff. Vitesse presumes that the Commission intended to allow Schedule 272 customers to continue using Schedule 272 pending a future investigation into the tariff, while simultaneously adopting limits to Schedule 272's usage to protect other cost-of-service customers. However, the limitations and guidance adopted in Order No. 20-473 on the use of Schedule 272 are unclear.

Currently, Order No. 20-473 could have the practical impact of eliminating Schedule 272 as a viable option for cost-of-service customers, meaning Vitesse and its parent company Facebook would lose the only practical renewable power purchase option that meets its sustainability goals in Oregon. Vitesse is planning to use Schedule 272 in 2021 to support 100 percent of its Oregon data center load with renewable energy, and Order No. 20-473 could significantly disrupt those efforts. If there is no renewable power option for Vitesse's Prineville

Data Center in Oregon, then it would be Facebook's *only* data center in the country without a viable tariff to maintain its commitment to supporting its operations with 100 percent renewable energy.

Therefore, Vitesse respectfully requests that the Commission clarify Order No. 20-473 to confirm that Vitesse can use Schedule 272 during the pendency of any investigation.

Alternatively, if clarification of Order No. 20-473 results in an interpretation that removes or significantly limits Vitesse's ability to use Schedule 272, then Vitesse requests that the Commission reconsider and amend the order. This application provides additional information and alternative options for reconsideration that the Commission should consider when deciding which limitations and guidance should apply to the continued use of Schedule 272.

II. BACKGROUND

Vitesse intervened in this proceeding on March 25, 2020.¹ Since then, Vitesse was a party to the Partial Stipulation to resolve issues related to rate design, submitted Prehearing and Opening Briefs, and participated in Oral Argument. Both the briefs and Oral Argument focused on Vitesse's current need to continue using PacifiCorp's Schedule 272 as the vehicle to achieve its corporate renewable energy goals. Both briefs explained that Schedule 272 is currently the only renewable power option available to PacifiCorp's large cost-of-service customers in Oregon.² The primary reason Vitesse intervened was to ensure that there would be a renewable power option that allowed it to meet its sustainability goals.

Other parties also addressed Schedule 272. Staff recommended opening an investigation into Schedule 272 to determine whether it was, in effect, a Voluntary Renewable Energy Tariff

¹ Vitesse Petition to Intervene at 2-3.

² Vitesse Prehearing Brief at 2; Vitesse Opening Brief at 2.

(“VRET”), subject to certain regulatory standards.³ Staff also recommended that “[i]n the interim, ... the Commission direct PacifiCorp to refrain from entering into Schedule 272 contracts that involve [(Renewable Energy Credits)] RECs from utility-owned resources.”⁴ No party, including Staff, recommended restricting the continued use of Schedule 272 in conjunction with power purchase agreements (“PPAs”).⁵ Stated another way, no party made any recommendations that could have prevented Vitesse from using Schedule 272 for its data center growth in 2021. Vitesse did not object to Staff’s recommendation because, among other reasons, it would allow Vitesse to procure additional RECs through Schedule 272 in the near-term.

When the Commission issued Order No. 20-473, it acknowledged Vitesse’s request “to maintain Schedule 272 with a PPA option during the course of any investigation.”⁶ However, the order ultimately placed limitations on future Schedule 272 transactions that the parties had not discussed or briefed. The Commission explained that it would “not prohibit PacifiCorp from moving forward under Schedule 272”, but it identified limitations designed to balance the competing considerations of customer protection, regulatory fairness, and green energy product availability for customers in the near-term.⁷

Order No. 20-473 specifically included directives: 1) cautioning PacifiCorp not to procure any new “utility-owned resources to supply specified RECs to customers,”⁸ 2) subjecting any procurement of “new PPA-based resources to supply Schedule 272 customers” to a 175 average megawatt (“aMW”) cap⁹ (including the Pryor Mountain wind project), and 3)

³ Staff’s Prehearing Brief at 49.

⁴ *Id.*

⁵ Vitesse Prehearing Brief at 2; Vitesse Opening Brief at 2.

⁶ Order No. 20-473 at 132.

⁷ *Id.* at 133.

⁸ *Id.* at 133.

⁹ *Id.* at 134.

“caution[ing] PacifiCorp not to consider Schedule 272 an appropriate mechanism to provide ... community-wide green tariffs”, as it may not sufficiently protect customers, and an upcoming investigation into community green tariffs could change the design of PacifiCorp’s green energy products offered.¹⁰

Vitesse understands and appreciates that the Commission wants to protect non-participating cost-of-service customers and promote fairness to others who have relied on the Commission’s VRET conditions to guide other utilities’ customer choice programs.¹¹ Vitesse also appreciates the Commission’s recognition “that customers and communities have expressed a desire for access to large-scale green products,” and that the “Commission is challenged to keep pace with the urgency of this demand” as it works to resolve critical, outstanding regulatory issues.¹² Vitesse supports all of these goals and supports providing Oregon customers with additional renewable energy programs, including a PacifiCorp VRET.

Vitesse does not believe there was any intention to create a situation where PacifiCorp’s large cost-of-service customers would not have a renewable energy option while Staff investigates Schedule 272. However, as is, the order could create that exact situation. After reading the order’s directives, Vitesse recognized that there is no clear direction on how PacifiCorp should calculate the 175 aMW cap. Depending on how PacifiCorp calculates the cap, the aggregate needs of all Schedule 272 customers (like Vitesse and other companies with renewable energy goals) could exceed that cap before an investigation is over. If that happens, there is no alternative renewable energy program Vitesse (or other large PacifiCorp cost-of-service customers) can rely on to achieve its sustainability objectives in Oregon. As a result,

¹⁰ *Id.*

¹¹ *Id.* at 133.

¹² *Id.*

Vitesse asks the Commission to clarify the portions of its order listed in the section immediately below. In addition, depending on what limitations and guidance the Commission meant to adopt in Order No. 20-473, Vitesse also requests that the Commission reconsider the order and adopt one or more of the alternative approaches listed below to ensure Schedule 272 is available while Staff investigates the tariff and PacifiCorp considers implementing a VRET option.

III. LEGAL STANDARD

Vitesse’s application meets the legal standard for the Commission to consider a reconsideration and clarification. Under the legal standards articulated in OAR 860-001-0720(2), an application for reconsideration must specify:

- (a) The portion of the challenged order that the applicant contends is erroneous or incomplete;
- (b) The portion of the record, laws, rules, or policy relied upon to support the application;
- (c) The change in the order that the Commission is requested to make;
- (d) How the applicant’s requested change in the order will alter the outcome; and
- (e) One or more of the grounds for rehearing or reconsideration in section (3) of this rule.

Section three of this rule explains that the Commission “may grant an application for ... reconsideration if the applicant shows that there is ... [g]ood cause for further examination of an issue essential to the decision.”¹³

Here, Vitesse asserts that Order No. 20-473 is incomplete because it does not clearly explain how to calculate the cap and which projects the cap applies to. Vitesse relies on Staff’s filings summarized in the order, both of Vitesse’s filed briefs, and other relevant sources within Docket No. UE 374 to support this application for reconsideration and clarification. Vitesse asks the Commission to amend its order under ORS 756.568 and clarify:

- 1) whether the Pryor Mountain wind project, which is not a “new PPA-based resource,” counts toward the cap on new PPA-based resources to supply Schedule 272 customers;

¹³ OAR 860-001-0720(3)(d).

- 2) whether the 175 aMW cap applies solely to Oregon’s allocated share of energy resources or broadly to PacifiCorp’s entire system;
- 3) whether the cap applies to REC purchases when PacifiCorp is not procuring a new underlying resource;
- 4) whether the cap applies to qualifying facilities (“QFs”) contracted with under the mandatory purchase obligation in the Public Utility Regulatory Policies Act (“PURPA”); and
- 5) what the process will entail if PacifiCorp seeks to acquire new resources to support Schedule 272 transactions once it has reached the cap.

Furthermore, if the Commission clarifies that the 175 aMW cap includes energy from system-wide PacifiCorp resources, the Pryor Mountain wind project, and/or RECs procured that do not include a new underlying resource, then Vitesse asks the Commission to reconsider the details surrounding the cap. Specifically, in that scenario, Vitesse asks the Commission to amend the order under ORS 756.568 to include one or more of the suggested mitigation measures listed below.¹⁴

- 1) Not implementing the cap until 2022 or until PacifiCorp is further along in implementing its VRET.
- 2) Excluding the Pryor Mountain wind project from measuring progress toward meeting the cap.
- 3) Creating an expedited review process for PacifiCorp in cases where a near-term need for additional Schedule 272 transactions exceeds the cap.
- 4) Amending the order so that the 175 aMW cap applies only to Oregon’s allocated share of PacifiCorp’s system resources.

It is unclear to Vitesse whether the Commission thoroughly considered the effect the cap would have on Schedule 272 customers like Vitesse. Granting this application will give the Commission an opportunity to clarify its intention, and render a well-reasoned and transparently made final decision that cost-of-service customers can use for guidance in future Schedule 272

¹⁴ There may also be other suitable alternatives that Vitesse has not listed here. The main point of suggesting these alternatives is to find a path forward that does not threaten Vitesse’s ability to meet its sustainability objectives and meets the Commission’s goals of protecting other cost-of-service customers. Vitesse is not opposed to the Commission finding another alternative.

transactions. The outcome will also provide a greater understanding for interested customers on whether they can rely upon an approved tariff to meet their renewable energy goals in Oregon. Lastly, the Commission has clearly expressed an interest in finding the appropriate balance that promotes customer protection, regulatory fairness, and an avenue for large customers to continue using Schedule 272 while the Commission considers other renewable energy options for PacifiCorp.¹⁵ Because this order, as is, creates a possible scenario that would deprive large cost-of-service customers of access to needed renewable energy products for an extended period, the Commission has good cause to further examine and reconsider the effect the 175 aMW cap will have on Oregon customers like Vitesse. Considering all the above, the Commission should accept its Application for Reconsideration and Clarification.

IV. DISCUSSION

A. The Language in the Commission’s Order Is Unclear

The Commission’s Order No. 20-473 put the following “limitations in place” for future PacifiCorp transactions under its Schedule 272 tariff.¹⁶

- 1) The Commission cautioned “PacifiCorp against procuring new utility-owned resources to supply specified RECs to customers” because that practice “raises unique cost-shifting and competitive concerns that PacifiCorp should not be able to avoid by using Schedule 272 rather than a VRET.”¹⁷
- 2) It told PacifiCorp to “consider procurement of new PPA-based resources to supply Schedule 272 customers—including Pryor Mountain—to be subject to the cap set in UM 1690 (175 average MW for PacifiCorp), unless” it could “demonstrate to the Commission in advance that it has mitigated the potential impacts on non-participating cost-of-service customers.”¹⁸
- 3) It cautioned “PacifiCorp not to consider Schedule 272 an appropriate mechanism to provide community-wide green tariffs” because it “may not have sufficient

¹⁵ Order No. 20-473 at 133.

¹⁶ *Id.* at 134.

¹⁷ *Id.* at 133-134.

¹⁸ *Id.* at 134.

protections to be a model for community-wide green tariffs, and the planned investigation into community green tariffs outlined in the Commission’s EO 20-04 Work Plan will be an important place for PacifiCorp to engage with communities, stakeholders and Staff on appropriate design considerations.”¹⁹

Vitesse’s points for clarification tie to the second directive – the 175 aMW cap. The Commission should amend its order and clarify these unanswered questions to provide more transparency and guidance. In considering this clarification request, Vitesse asks that the Commission consider the practical impact on Vitesse and other potential cost-of-service customers.

First, Order No. 20-473 is unclear because the cap states that it applies to prospective Schedule 272 “PPA-based-resources” from the date of the order.²⁰ However, it also appears to apply to the Pryor Mountain wind project, even though the project is not a new power purchase agreement. If the Pryor Mountain wind project counts towards the 175 aMW cap, it will take up a significant portion of that cap.

Second, Order No. 20-473 is unclear regarding whether the cap encompasses Oregon’s allocated share of energy resources or applies to PacifiCorp’s total system. If only Oregon’s allocated share of system resources count towards the cap, then Vitesse believes there will likely be room to meet its near-term Schedule 272 needs.

Vitesse understands that PacifiCorp may not have enough room under this cap to accommodate Vitesse’s near-term Schedule 272 needs if: 1) the 175 aMW cap was meant to apply to PacifiCorp’s total system-wide resources (rather than Oregon’s allocated share); and 2) room for new transactions under the cap are immediately reduced by the Pryor Mountain wind project’s average output. Given the uncertain length of any investigation or VRET application

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Id.

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Id.

process before the Commission, the cap could limit cost-of-service customers' access to new renewable energy products for a significant time. Vitesse recommends that the Commission clarify Order No. 20-473 to either exclude the Pryor Mountain wind project from counting against the cap or confirm that the 175 aMW cap applies to only Oregon's allocated share of system resources.

Third, it is unclear whether the 175 aMW cap applies to REC purchases when PacifiCorp does not procure the underlying resource through a new PPA. If the cap applies to these REC purchases, those transactions will take up needed room under the cap. Vitesse does not have insight into PacifiCorp's volume of procurement for these types of REC purchases and does not know the impact of such a restriction.

Fourth, it is also unclear whether the cap applies to mandatory purchases from QFs under PURPA if PacifiCorp utilizes RECs from those resources for Schedule 272 purposes. Vitesse assumes PURPA QFs would be excluded from the Schedule 272 cap because PacifiCorp does not have discretion on whether to enter into these contracts. Thus, Vitesse requests clarification on whether contracts with new QFs count toward meeting the Schedule 272 cap. Vitesse does not have insight into PacifiCorp QF purchases and does not know the impact of such a restriction.

Finally, the Commission stated that PacifiCorp could exceed the cap by "demonstrat[ing] to the Commission in advance that it has mitigated the potential impacts on non-participating cost-of-service customers."²¹ It is unclear how and in what process PacifiCorp can make such a demonstration. If the Commission adopts a cap that could potentially accommodate Vitesse's near-term need for new Schedule 272 transactions, then Vitesse asks the Commission to provide detailed directions regarding the standard for mitigating potential impacts on non-participating

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Id.

cost-of-service customers. The Commission should also provide direction as to the type of proceeding in which PacifiCorp would make such a demonstration. The Commission should clarify that this would be an expedited review process for PacifiCorp customers with a near-term need for additional Schedule 272 contracts.

B. The Commission Should Reconsider Order No. 20-473, if the Order Limits Access to Schedule 272 Transactions During a Pending Investigation or VRET Filing

If the result of clarification would be to effectively deprive large cost-of-service customers of an option to procure RECs above the cap until an alternative tariff can be established and approved by the Commission, then Vitesse asks the Commission to reconsider its order. Vitesse explained its current need for Schedule 272 at great length in its Prehearing and Opening Briefs.²² In short, Schedule 272 is the only renewable power product that PacifiCorp offers its large cost-of-service customers. PacifiCorp does not currently have a VRET or any other voluntary renewable program. Vitesse does not oppose PacifiCorp pursuing and implementing a VRET. However, it understands that Commission approval of a VRET would likely take over a year of regulatory proceedings to come to fruition.²³ An investigation into Schedule 272 could also take a considerable amount of time, which is why Vitesse expressly requested that the Commission allow Schedule 272 procurement to continue until any such investigation concludes.²⁴ If PacifiCorp reaches the 175 aMW cap before a VRET proceeding or investigation is complete, Vitesse will have no way to achieve its renewable energy goals in the near-term.

²² Vitesse Prehearing Brief at 3-5; Vitesse Opening Brief at 9-10, 14-15.

²³ *See In re Portland General Electric Company Investigation into Proposed Green Tariff Filing*, Docket No. UM 1953. The docket opened in May of 2018 to approve Portland General Electric Company's VRET and that process is still ongoing.

²⁴ Vitesse Opening Brief at 10.

1. Vitesse Cannot Meet Its Sustainability Goals If There Is a Significant Lapse in an Available Renewable Energy Product From PacifiCorp

Schedule 272 has been crucial for Vitesse and its parent company, Facebook, to meet its goal of supporting 100 percent of its operations with renewable energy in 2020 and remain on track to achieve its goal of net zero emissions across its value chain in 2030.²⁵ In Oregon, Vitesse has used this tariff to meet its sustainability objectives for the growing Prineville Data Center campus, and requests that the Commission allow Vitesse to continue using the tariff in the near-term to support that campus's growth.

Vitesse provides this summary to assist the Commission in making a more informed decision. There is no clarity regarding what other current or prospective PacifiCorp cost-of-service customers may need through Schedule 272 in the near-term. Therefore, Vitesse does not have an accurate picture of how much room it specifically has to utilize under the cap and whether it can meet its goals.

Vitesse's Prineville Data Center campus is growing, and the campus expansion construction efforts are underway.²⁶ Accordingly, Vitesse plans to execute additional Schedule 272 transactions with PacifiCorp in 2021 to maintain its commitment to support its operations with 100 percent renewable energy. The reality is, if PacifiCorp reaches the 175 aMW cap and Schedule 272 or a new VRET option is not available, then the Prineville Data Center would be the only Facebook data center in the country with no practical pathway to meeting its sustainability goals. Vitesse cannot overemphasize the importance of having a viable near-term renewable power option for large cost-of-service customers.

²⁵ Vitesse Opening Brief at 3.

²⁶ <https://www.facebook.com/notes/prineville-data-center/facebook-announces-ninth-building-in-prineville/10157358190538133/>

2. The Commission Can Adequately Balance Customer Protection, Regulatory Fairness, and Renewable Energy Availability With Other Approaches

If the Commission intended to adopt a 175 aMW total resource cap further reduced by the Pryor Mountain wind project, then Vitesse asks the Commission to reconsider its order and implement another alternative that would allow Vitesse and other cost-of-service customers to use the approved tariff until the Schedule 272 investigation is complete or a new VRET option is available. Vitesse presents a non-exhaustive list of potential modifications that would achieve the Commission's intentions of maintaining a reasonable cap that allows a customer like Vitesse to meet its near-term goals while protecting non-participating customers.

The simplest alternative remedial directive could include not implementing the cap until 2022 or until PacifiCorp has an available VRET. This option would likely allow enough time for Staff to finish its investigation into Schedule 272 and would at least provide a renewable energy option for PacifiCorp's large cost-of-service customers while the Commission and PacifiCorp evaluate other workable tariff options.

Alternatively, the Commission could reconsider including the average output of the Pryor Mountain wind project in the cap. As previously mentioned, it appears the Commission intended to encompass prospective new PPAs under Schedule 272 in the cap, and the Pryor Mountain wind project is an existing owned project. Excluding it would provide more room for interested customers to work with under the cap. This treatment would also be consistent with the prospective cap established by the Commission in Docket No. UM 1690, which the Commission referenced in Order No. 20-473.²⁷

²⁷ Order No. 20-473 at 134.

Adopting one or more of these alternatives will ensure that the solution adequately balances customer protections and fairness while providing PacifiCorp's cost-of-service customers an avenue towards achieving their corporate renewable energy goals. Vitesse also remains open to other potential alternatives that may achieve the same end goal. For example, the Commission could amend the order so that the 175 aMW cap applies only to Oregon's allocated share of PacifiCorp's system resources. Vitesse simply asks for a reasonable accommodation to allow for continued procurement through Schedule 272 while the Commission investigates the tariff and new renewable energy tariff alternatives.

V. CONCLUSION

For the reasons explained above, Vitesse respectfully requests that the Commission grant this Application for Reconsideration and Clarification of Order No. 20-473.

Dated this 11th day of February 2021.

Respectfully submitted,



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