BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1610

In the Matter of	)	CORONAL DEVELOPMENT SERVICES
PUBLIC UTILITY COMMISSION OF OREGON	)	PRE-HEARING BRIEF
Investigation Into Qualifying Facility Contracting and Pricing.	)	PHASE II

I. INTRODUCTION

Pursuant to the Administrative Law Judge's August 28, 2015 Ruling, Coronal Development Services ("CDS") submits this pre-hearing brief regarding the appropriate manner to obtain, calculate, and assign the third-party transmission costs that are incurred to wheel a qualifying facility's ("QF") net output out of a load pocket. CDS is not addressing other Phase II issues at this time, but may address additional issues later in the proceeding. CDS is not challenging the Oregon Public Utility Commission's (the "Commission" or "OPUC") determination that QFs should be responsible for the reasonable third party transmission costs to transmit their net output to the utility's load.

Oregon utilities should not be allowed to require a QF to pay for unnecessarily expensive long-term firm ("LTF") point to point ("PTP") transmission when there are more cost effective options. There is a myriad of potential load pocket situations, and the utilities should work with the QF to obtain the lowest cost solution that reliably addresses the unique circumstances facing each QF. QFs should also be provided options regarding whether the costs of third party transmission should be paid as a fixed amount estimated

at the time of contract formation or be based on actual costs as they are incurred. In addition, QFs should be given the choice to pay for the costs as a separate charge or a reduction in the avoided cost prices. Finally, QFs should be able to obtain complete information regarding the existence of a load pocket, the need for third party transmission, and the options to reliably wheel the power to load.

The basic question on the issue of third party transmission is whether QFs will be provided with flexibility and reasonable options. PacifiCorp's proposed approach would impose a one size fits all policy that is inconsistent with how the company plans and purchases transmission, results in uneconomic and burdensome solutions, and will unnecessarily prevent cost effective QF resources from developing. There is no reasonable basis why QFs should not have the option to choose the most economic third party transmission as long as it is adequately reliable.

II. CORONAL DEVELOPMENT SERVICES

CDS is a national solar energy services provider and project development firm. CDS is the result of the February 2015 acquisition of HelioSage by the alternative energy development business Coronal Group. The entirety of the HelioSage team and project pipeline now resides within CDS. At the time of its acquisition by Coronal Group, HelioSage was among the nation's fastest growing independent solar development firms, with a contracted pipeline of over 400 megawatts of executed power purchase agreements ("PPAs") in the past two years with utilities, including Georgia Power, Gulf Power (Florida), Duke Energy Progress (North Carolina), and the Tennessee Valley Authority. In addition, CDS has PPAs with Idaho Power Company in Oregon and PacifiCorp in

Oregon, with two of its projects located in a PacifiCorp load pocket. None of the projects are operating yet.

CDS, and other similarly situated solar developers, are interested in constructing and selling cost effective and carbon free solar electricity to Oregon customers. Essentially, CDS wants to bring its investment capital to the state of Oregon, contribute to this state's economic prosperity, and assist in the transition to a twenty first century energy policy. CDS is not seeking avoided cost rates that are any higher than the prices that Oregon utilities would otherwise pay to construct or purchase electricity to serve their end use customers. Instead, CDS requests that this Commission adopt policies that remove unnecessary burdens and provide QFs a fair opportunity to sell their electricity in a way that either benefits or holds ratepayers harmless.

III. BACKGROUND

The Commission opened this proceeding regarding contracting and pricing under the Oregon and federal Public Utility Regulatory Policies Acts ("PURPA") to investigate a number of issues, including the responsibility and cost allocation for third party transmission. In Phase I, the Commission adopted a general principle "that avoided cost rates should be adjusted for costs imposed on a utility by the particular circumstances of a QF", including requiring the QF to pay for third party transmission costs. Re Commission Investigation into QF Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 22 (Feb. 24, 2014). The Commission, however, concluded that the parties did fully address the way in which the QF should pay for the third party transmission costs attributable to the QF, and deferred this issue to Phase II of this proceeding. Id. at

22-23. The Commission recognized that costs could be accounted for by lowering the avoided cost rates, included in a separate cost assessment, or some other means. Id.

The parties to this proceeding have focused their arguments regarding third party transmission costs on: 1) what information should be provided to a QF in a load pocket; 2) what third party transmission costs should be purchased to transmit a QF's power out of a load pocket; 3) whether there should be an opportunity to update those costs as circumstances change; and 4) whether those costs should be paid through a reduction in avoided cost rates, or a separate contract provision. CDS supports the general recommendations of the Commission Staff, the Oregon Department of Energy ("ODOE"), the Community Renewable Energy Association ("CREA") and the Renewable Energy Coalition ("Coalition") proposing that the QF should:

- Be provided detailed information regarding the existence of a load pocket, and the transmission costs to wheel the power out of the load pocket, including but not limited to hourly generation and load profiles;
- Have the option to select reasonable third party transmission cost options to transmit their net output to load that best fits their operational circumstances;
- Have the option to select a fixed cost transmission purchase at the time of contract formation, or to pay the actual third party transmission costs incurred during the contract; and
- Have the option to pay for the third party transmission through a separate contract provision, and/or for an avoided cost price reduction.

In contrast, PacifiCorp has focused on explaining why QFs should be responsible for third party transmission costs (an issue resolved in Phase I), and proposing that all QFs should be required to pay the actual costs of expensive LTF PTP transmission regardless of whether it is needed or there are more cost effective options. As explained

in this brief, PacifiCorp's approach should be rejected because it is unnecessarily expensive, arbitrarily harms QFs, and results in unjust and unreasonable rates.

IV. ARGUMENT

1. Oregon Law Requires that Third Party Transmission Costs Should Not Be Unnecessarily Expensive

The Commission has the statutory responsibilities to protect QFs, ensure that they are charged only reasonable costs, and promote their development, as long as end use consumers and the public interest are safeguarded. The rates for utility purchases from and the rates paid by QFs must be just and reasonable. ORS § 758.515(2)(b). The Commission also has been charged to promote a diverse array of sustainable energy "to the highest degree possible", increase the marketability of Oregon QFs, and to create a settled and uniform institutional climate for Oregon QFs. ORS § 758.515(2)&(3).

When QFs pay for interconnection and transmission costs incurred by the utility on their behalf, they are also utility customers entitled to the protection of the Commission "in all controversies respecting rates, valuation, service, and all matters of which the commission has jurisdiction." ORS § 756.040(1). This responsibility includes obtaining for customers "adequate service at fair and reasonable rates." Id. Therefore, the Commission is charged under both the Oregon PURPA and its general ratemaking powers to defend and champion the interests of QFs.

The Commission's decisions regarding the prudence and reasonableness of utility costs illustrate what should be considered fair and reasonable. A utility's analysis in making decisions, including the acquisition of electricity, should flexibly consider all available options to reach an objectively reasonable decision. Re PGE Application for

Annual Adjustment to Schedule 125 under the terms of the Resource Valuation Mechanism, Docket No. UE 139, Order No. 02-772 at 11-14, 17-18 (Oct. 30, 2002). The utility's decisions do not need to produce the "optimal results" but should look at how reasonable people would have performed the task under the same circumstances at the time the decision was made. PacifiCorp Request for a General Rate Revision, Docket No. UE 246, Order No. 12-493 at 25, 27 (Dec. 20, 2013).

In applying these principles to the issue of third party transmission, the Commission should adopt a flexible policy that considers the reasonable options to adequately transmit power. The goal should not be to acquire the most expensive and gold plated transmission that will make it extremely difficult, if not impossible, for some QFs to transmit their power out of a load pocket. Instead, the Commission is statutorily obligated to ensure that PacifiCorp acquires reasonable and adequate third party transmission that increases the marketability of QFs and pushes Oregon towards serving load with a diverse array of sustainable energy.

2. The Commission Needs to Protect QFs by Requiring Utilities to Acquire Reasonable Third Party Transmission Costs

The acquisition of third party transmission is a unique situation that warrants the Commission taking extra precautions to protect QFs from potentially abusive and harmful utility actions. PacifiCorp's merchant operations arm, which generally does not want to buy power from QFs, must negotiate on behalf of QFs to obtain reliable third party transmission. Without a strong Commission policy protecting QFs, PacifiCorp is unlikely to take reasonable actions to verify that third party transmission is needed, or to take the cost effective action to meet each QF's unique wheeling needs.

The federal and Oregon PURPAs were passed to ensure that QFs can sell power to utilities that did not (and often still do not) want to purchase their power. The law was (and still is) required because "traditional electricity utilities were reluctant to purchase power from, and to sell power to, the nontraditional facilities." Federal Energy Regulatory Comm'n v. Mississippi, 456 U.S. 742, 750 (1982); Environmental Action, Inc. v. Fed. Energy Regulatory Comm'n, 939 F.2d 1057, 1062 (D.C. Cir 1991). The goal of PURPA was "to address discrimination by electric utilities in the availability and price of power that they sell to and buy from cogeneration facilities for resale." Industrial Cogenerators v. Fed. Energy Regulatory Comm'n, 47 F.3d 1231, 1232 (D.C. Cir 1995). In addition, as utility transmission customers, the Commission is obligated to protect them "from unjust and unreasonable exactions and practices . . . ." ORS § 756.040(1).

The Commission recognizes that QFs often face issues related to unequal bargaining power with the utilities, asymmetric information, an unlevel playing field, high transaction costs, and other market barriers. Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 6-12, 16 (May 13, 2005). In addition, the Commission has acknowledged the fact that utilities do not want to purchase power from third parties because the utilities do not earn a profit unless they own the generation resource. Re an Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build vs. Buy Bias, Docket No. UM 1276, Order No. 11-001 at 5 (Jan. 3, 2011).

PacifiCorp asserts that the QF should not have the choice of transmission service because it is the utility's obligation to acquire transmission from the point of delivery to its load. PAC/1600, Griswold/4, 7-8. PacifiCorp is correct in that the company's

merchant function is the legal entity that requests transmission service, and must enter into arrangements with its own transmission function and/or third parties to transmit the power to load. Id. at Griswold/5.

The fact that the business relationship is between PacifiCorp merchant and PacifiCorp transmission and/or a third party transmission provider warrants the Commission providing QFs with additional protection. Coalition/400, Lowe/32. The QF is not a direct party to the discussions between PacifiCorp's merchant function and the transmission providers (either PacifiCorp transmission or third parties). Id. This means that PacifiCorp merchant is "negotiating on the behalf of QFs that the company does not want on its system in the first place." Id. The QF has no bargaining ability, has only the information that the utility wishes to share, is left "at the mercy of PacifiCorp to act on its behalf to procure transmission service, and has no option but to accept the estimated costs at the time of PPA signing." ODOE/1200, Broad/4-5. The Commission's final policies should account for this unique situation and potential for utility abuse.

3. The Utilities Should Be Required to Provide Complete and Accurate Third Party Transmission Information during Contract Formation and Implementation

The Commission should make it clear that PacifiCorp must provide all relevant information regarding the need for and cost of third party transmission to wheel power out of a load pocket. This requirement should exist during all aspects of the QF and utility business relationship, including the contract formation process, the determination of the existence of the load pocket and need for third party transmission, the negotiations and discussions with transmission entities, and the accounting for transmission costs.

Initially, PacifiCorp should be required to provide all information regarding the existence of potential load pockets early in the contract negotiation process. PacifiCorp claims that it agrees in principle that a QF should be able to analyze "transmission system constraints and the cost of options for dealing with those constraints," but has resisted specific proposals from the parties regarding information that should be provided prior to and during contract formation. PAC/200, Griswold/11; PAC/1300, Griswold/14-15. CDS specifically supports CREA's recommendation that, at the start of the contract formation process, the QF should be provided load pocket map data, minimum and maximum monthly loads and generation in load pockets, the amount of generation that can be accommodated, and supporting documentation. CREA/500, Skeahan/22. This information can be helpful to assist the QF in making an informed decision about whether it should site its facility in a load pocket.

Next, the QF should be provided all relevant information regarding the existence, and costs of third party transmission out, of the load pocket. While the company has backtracked in this proceeding, PacifiCorp previously stated that third party transmission expenses charged to QFs should be "transparent and verifiable." Revises Schedule 37, Avoided Cost Purchases from QF of 10,000kW or less to designate the QF as a network resource susceptible to transmission charges within the Pacific Power system, Docket No. UE 235, PacifiCorp Reply Brief at 14-15 (Dec. 12, 2011). In terms of an overall policy, CDS supports Staff's generic requirement that the QF be provided:

> specific and detailed information regarding the load, generation, and transmission capacity values used in making that determination, and into the basis for calculating the amount and cost of the third party transmission that would be required.

Staff/500, Andrus/42. To ensure that the utility acts on the QF's behalf, CDS supports Coalition's recommendation that the QF also be able to require PacifiCorp to obtain and share with the QF all reasonable information from any third party transmission provider regarding the costs, availability and need for transmission. Coalition/400, Lowe/33.

Finally, the QF should be allowed the unrestricted right to verify, audit, and challenge the actual third party transmission costs. For example, billing errors can occur in any transaction, and typically the party who pays any bills has the ability to verify and dispute any bills. The QF should be allowed the right to investigate and challenge bills, even though the actual contract relationship may be between PacifiCorp and a third party.

4. Load Pocket Situations Are Complex and Constantly Changing

Load pocket transmission situations are unique and dynamic, and do not warrant a one size fits all solution. The actual third party transmission needs will differ for each load pocket because of the QF generation profiles, the particular load characteristics, location, and availability of transmission. Finally, all of these factors can dramatically change over time, and QFs should have the option to enter into short-term arrangements that would allow them to take advantage of load, generation, and transmission changes. Therefore, the QF should be allowed to select amount and type of third party transmission that best meets their circumstances while also ensuring adequate reliability.

PacifiCorp admits that the need for third party transmission and its costs are "dynamic" and changeable as load and generation is added or removed. PAC/1300, Griswold/13-14. Many load pocket situations are highly dependent upon variable or seasonal loads and sometimes the problem only arises in certain times of the year. PAC/1000, Griswold/24; ODOE/800, Broad/13; CREA/500, Skeahan/23. For example,

the Dalreed area has seasonal loads that "range from about 44 MW peak during the summer to less than 2 MW during the winter." PAC/1000, Griswold/25. Load pocket situations can also change when load is added or removed. PAC/1600, Griswold/8. For example, a data center or prison could site itself in a load pocket, which would change the whole outlook and eliminate or reduce the need to wheel the QF's net output. ODOE/800, Broad/18-20. In this case, the QF could reduce the need for the utility to acquire or build transmission to serve the new load.

The need for transmission can significantly differ depending on the QF's generation characteristics. ODOE/800, Broad/13, 18. Solar generation is variable, but has a relatively consistent pattern of delivery that may more closely match load profiles. Id. at Broad/17-18. Other generation sources like biomass and hydroelectric can also sometimes have seasonal or daily variability that is predictable. It is inconceivable that a solar generation resource with a generally reliable but variable pattern of delivery will need transmission for its entire nameplate capacity during all hours of the year.

The QF's generation profile and a realistic estimate of the number of low-load hours for the load pocket should be the basis of any transmission acquisition. Id. at Broad/12. The minimum load situation could exist for only a small number of hours during any given year. Id. at Broad/13. As explained by ODOE witness Diane Broad:

> The calculation must realistically reflect the need for transmission of excess generation over the whole year, considering the historical minimum load in the load pocket and the generation profile of the QF described in the standard contract.

Id. at Broad/18.

5. Third Party Transmission Purchases Should Reflect the Actual Transmission Needs

QFs should have the ability to select from available and reliable transmission options that best meet their operational characteristics and load situation. A flat and fixed fee transmission like LTF PTP may be the best solution for some QFs; however, other QFs would benefit from using more flexible transmission arrangements. This is especially the case for variable or seasonal generation that might match up well with seasonal or potentially changing loads.

PacifiCorp has proposed that all QFs located in a load pocket should be required to use LTF PTP transmission to wheel their net output to the utility's load. PAC/1000, Griswold/26. PacifiCorp asserts that this approach is required because it is the only dependable way to transmit surplus generation from a load pocket for the full term of the contract. PAC/1300, Griswold/17. This is an unnecessarily expensive solution to a problem that may only arise for limited periods of time, may disappear over time, and is inconsistent with how utilities manage their own transmission needs.

As explained above, load pocket situations may only exist for limited periods of time. Requiring QFs to pay for expensive LTF PTP transmission at the project's nameplate capacity for all hours of the year is economically inefficient and penalizes QFs by forcing them to pay for transmission that is completely unnecessary. ODOE/800, Broad/12, 18; ODOE/1000, Broad/4; CREA/600, Skeahan/14; Coalition/600, Lowe/17-18. Instead, the type of transmission service should be based on what is best suited to the needs of the QF in the specific load pocket. ODOE/800, Broad/16. As explained by Coalition witness John Lowe:

> PacifiCorp's approach could produce absurd results. Assume a 10 MW QF is in a load pocket, and that for 364 days and 23 hours of the year there is adequate transmission to transmit the QF's entire generation to PacifiCorp's load. Therefore, there is only one hour of the year in which there is insufficient transmission to transmit the QF's generation to PacifiCorp's load. PacifiCorp would require the QF to pay for 10 MWs of firm point to point transmission for every day and hour of the year, even if that 10 MWs is only needed one hour of the year. It would be unreasonable not to use lower cost alternatives to move the generation to load.

Coalition/600, Lowe/17-18.

PacifiCorp does not take a one-size-fits-all approach to its transmission needs, or require off-system QFs to obtain only one type of transmission service. As explained by CREA witness Brian Skeahan, PacifiCorp's proposal:

> is discriminatory as it is certainly not the approach PacifiCorp takes with its own generation and native load where it goes to great lengths to utilize the full range of products and services available to it from BPA's transmission function to make the most efficient use of its transmission dollars.

CREA/600, Skeahan/14. Transmission savings from re-sales of third party transmission should also be passed back to the QF. In contrast, PacifiCorp analyzes economic optimization, different transmission options, the generation profile, and the variability of load "when procuring transmission for its own generation assets." ODOE/1200, Broad/3. Any electric system that guaranteed 100% availability "would be extremely costly and not a prudent investment." ODOE/1200, Broad/6. This recommendation is consistent with the Commission's statutory obligation to ensure "adequate service at fair and reasonable rates" rather than the most perfect and expensive service. ORS § 756.040(1).

PacifiCorp does not require its normal off-system QFs to transmit their power to only one expensive option. PacifiCorp asserts that there is not much difference between

an off-system QF and a QF in a load pocket. PAC/1300, Griswold/19-20. While CDS does not agree that the situations are perfectly analogous, an off-system QF is not required to purchase LTF PTP transmission. PacifiCorp Power Purchase Agreement for Off-system QFs 10 MWs and under, Addendum W at 1. The QF has the obligation to secure and deliver its net output, but also takes the risk that transmission may be curtailed or otherwise unavailable. Id. at 1-3. The main difference is that an off-system QF has the ability to make specific arrangements to transmit its net output and PacifiCorp is proposing to limit a QF in a load pocket to only one option.

There are numerous economic and reliable transmission options for QFs in load pockets. PacifiCorp agrees that there are more cost effective options for QFs and that it does not always require non-QF resources to purchase LTF PTP transmission. PAC/1000, Griswold/24-28; PAC/1300, Griswold/19. In addition, PacifiCorp has in fact used or is planning to use some of these options to move QF power out of loads pockets, including short term firm transmission and discounted transmission charges. PAC/1000, Griswold/24-28; PAC/1300, Griswold/19; ODOE/800, Broad/16. There also are other options including conditional firm products, non-firm transmission, use of facilities agreements, transfer agreements, and the utilization of unused PTP transmission rights on the secondary market that can achieve more efficient and economical third party transmission. CREA/500, Skeahan/23-24; Coalition/400, Lowe/29; Coalition/500, Lowe/18. A QF should be able to consider all options that can reliably transmit a QF's net output to load.

Mandating that the QF purchase transmission for the full length of their contract is also unreasonably restrictive. The QF should be able to benefit from and take the risk

that loads, generation, and transmission products can significantly change over time. The QF should have the option to have the existence of the load pocket and need for third party transmission re-evaluated over time, which would be impossible if they are limited to only one long-term option. Requiring the use of only one long-term transmission solution is simply inconsistent with using the transmission system in the most efficient and economical way possible. CREA/500, Skeahan/23-24.

CDS's own projects are an example of the flexibility that should be required.[1] PacifiCorp originally estimated that 20 MWs of transmission would be needed; however, that was later adjusted down to 14 MWs. PacifiCorp was also able secure some lower cost BPA transmission because "the transmission service was only across a BPA substation which is a 40 percent discount to full tariff rates." PAC/1300, Griswold/19. The full costs of transmission service would have resulted in each project unnecessarily taking a reduced payment of roughly 14 percent in the summer peak month, and roughly 60 percent in the winter peak month. ODOE/800, Broad/15. This supports not locking in the highest cost long-term transmission when circumstances can change and lower cost alternatives may be available.

As explained by Staff witness Brittany Andrus, the Commission should reject PacifiCorp's "expensive and inflexible method for allocating costs to the QF in every load pocket situation under the standard contract." Staff/700, Andrus/13. Ultimately, the

[1] CDS and PacifiCorp currently disagree about whether PacifiCorp is securing the appropriate amount and cost of third party transmission for its projects. That issue and those facts are not before the Commission or at issue in this proceeding; however, CDS reference to PacifiCorp's actions taken under the contracts should not be construed as support or agreement that PacifiCorp is managing those contracts consistently with Commission policy or the contract terms.

Commission should rely upon the testimony of Staff, ODOE, CREA, and Coalition to adopt a policy that allows the QF flexible options to solve the load pocket problem. Staff/600, Andrus/29-30.

6. The Commission Should Not Defer Fundamental Policy Decisions Regarding Third Party Transmission Costs to Phase III

Commission Staff recognizes that the issue of third party transmission costs is "inherently complex" and recommends deferring the load pocket issue to a Phase III. Staff/700, Andrus/13. CDS agrees that the issue is complex, and that there may need to be some implementation issues that should be addressed in a subsequent review of a compliance filing, tariff, or Phase III. The Commission, however, has been reviewing load pocket issues for over four years, and directed the parties to develop specific proposals in this case, and CREA and ODOE have made well detailed and developed proposals that the Commission should adopt.

In the event that the Commission defers any aspects of the load pocket issue, then the Commission should at least provide guidance regarding the appropriate policy, as it did in its Phase I order. At a minimum, the Commission should adopt a generic policy that the utilities should:

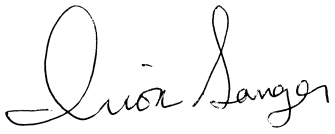
- Provide the QF with all information regarding the existence of a load pocket, and related the transmission;
- Allow the QF to select reasonable third party transmission services and costs that best fits their operational circumstances and the specific load pocket; and
- Have flexibility regarding whether the transmission costs should be fixed or variable over time, and whether recovered through a contract provision or a reduction in avoided cost prices.

V. CONCLUSION

The Commission can hold ratepayers harmless when a QF locates itself in a load pocket while also ensuring that QFs only pay the reasonable costs of third party transmission. There is no need to require QFs to pay for an inflexible and expensive transmission product over a twenty-year contract when there are numerous other options that better suit the QF's actual operational characteristics and transmission needs. QFs like CDS are only paid when their net output is delivered to load, and have a strong economic incentive to make sure that adequate and reliable transmission is purchased. They should also be given the freedom to explore options so that the most cost effective options are selected to meet each QF's unique and dynamic needs.

Dated this 2nd day of September 2015.

Respectfully submitted,



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