

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER THE PUBLIC UTILITY)	Docket No. UM 1610
COMMISSION OF OREGON)	
Investigation Into Qualifying Facility)	OPENING BRIEF OF THE
Contracting and Pricing)	COMMUNITY RENEWABLE ENERGY
)	ASSOCIATION AND THE
)	RENEWABLE ENERGY COALITION
)	
_____)	

INTRODUCTION AND SUMMARY

The Community Renewable Energy Association (“CREA”) and the Renewable Energy Coalition (“REC”) (collectively the “Joint QF Parties”) respectfully submit this opening brief in response to the Public Utility Commission of Oregon’s (“OPUC” or “Commission”) Order No. 18-181. In Order No. 18-181, the Commission revived PacifiCorp’s alleged “load pocket” problem after PacifiCorp had itself conceded this matter should be dismissed.

The Joint QF Parties remain concerned that the alleged load pocket problem – which conveniently exists *only* with regard to qualifying facilities (“QF”) and not any PacifiCorp-owned generation – is not a real problem. Based on information reviewed by the Joint QF Parties, it would be an exceedingly rare circumstance where PacifiCorp would need to incur any incremental third-party transmission costs to integrate the output of Oregon QFs if PacifiCorp were to act in good faith to fully utilize all of its existing transmission assets. PacifiCorp itself sought to withdraw its proposal for allocating third-party transmission costs to QFs soon after the Joint QF Parties sought to conduct depositions of PacifiCorp personnel knowledgeable in how PacifiCorp uses third-party transmission for PacifiCorp-owned generation at no incremental cost. The Commission should have accepted PacifiCorp’s concession and ended this matter instead of

continuing to develop unnecessary pricing reductions for Oregon QFs, which will certainly violate the Public Utility Regulatory Policies Act of 1978 (“PURPA”) if adopted in the form previously proposed by PacifiCorp in this proceeding.

Nevertheless, in response to Order No. 18-181, the Joint QF Parties recommend that the Commission issue an order directing as follows:

- For a QF that imposes incremental third-party transmission costs on PacifiCorp, such QF may select one of two options in its power purchase agreement (“PPA”):
 - A time-of-delivery price reduction: A straight pass-through of incremental third-party transmission costs to the QF as calculated at the time of delivery over the term of the PPA; or
 - A long-term fixed-price reduction: A fixed deduction to the PPA price tied to a forecast of incremental third-party transmission costs over the term of the PPA as calculated at the time of creation of the legally enforceable obligation to the PPA. For this option, the QF must elect at the outset of its obligation to the PPA that (i) this incremental third-party transmission cost deduction to the PPA rate will remain fixed over the term of the PPA, or (ii) will be reset every five years based on revised studies of the need for such transmission and, if necessary, revised forecasts of the incremental third-party transmission costs.
- The following critical administrative issues to implement this policy must include:
 - The fixed-price reduction for third-party point-to-point transmission shall be published and made available with PacifiCorp’s avoided cost rate schedule, and thus subject to review and challenge along with other rate components at the time avoided cost rates are approved.
 - The rate schedule and standard contract should also include the following explanatory points and requirements:
 - The incremental third-party transmission cost deduction’s applicability and, if applicable, the cost amount, would be determined on a contract-by-contract basis;
 - If PacifiCorp determines that incremental third-party transmission costs should be assigned to the QF, PacifiCorp will immediately provide the QF with a copy of the studies performed by PacifiCorp Transmission and any other applicable third-party Transmission Providers that PacifiCorp

relies upon to support the determination of the need for third-party transmission that imposes an incremental cost on PacifiCorp in order for PacifiCorp to integrate the QF's output;

- QFs may challenge PacifiCorp's determination of the need for third-party transmission that imposes an incremental cost on PacifiCorp, and PacifiCorp's proposed cost for such charges, in a forum with jurisdiction to resolve such dispute; and
- A QF that is already a network resource making sales to PacifiCorp under an existing PPA remains a network resource and is not subject to additional transmission costs upon renewing its PPA.

The background and legal argument supporting these recommendations are set forth in detail herein.

BACKGROUND

A. Regulatory Background

This docket regards an outstanding issue in the Commission's implementation of PURPA. In enacting PURPA, Congress's underlying intent was to "accelerate the development of renewable and inexhaustible energy sources and convert the national economy to alternative fuel resources in order to protect this country from the problems that would otherwise occur." H.R. Rep. No. 95-496(IV), at 14 (1977), *reprinted in* 1978 U.S.C.C.A.N. 8454, 8466. As such, the law remains highly relevant today.

Section 210 of the PURPA "seeks to *encourage* the development of cogeneration and small power production facilities" that utilize biomass, waste or renewable fuel sources. *FERC v. Mississippi*, 456 U.S. 742, 750 (1982) (emphasis added); 16 U.S.C. § 824a-3(a). Congress found this to be necessary because "traditional electricity utilities were reluctant to purchase power from, and to sell power to, the nontraditional facilities." *Mississippi*, 456 U.S. at 750.

Congress further determined these facilities need to be encouraged because “cogenerators and small power producers are different from electric utilities, not being guaranteed a rate of return on their activities generally or on the activities vis-a-vis the sale of power to the utility and whose risk in proceeding forward in the cogeneration or small power production enterprise is not guaranteed to be recoverable.” *Amer. Paper Institute, Inc. v. Amer. Elect. Power Serv. Corp.*, 461 U.S. 402, 414 (1983) (internal quotation omitted).

PURPA directs the Federal Energy Regulatory Commission (“FERC”) to establish regulations to implement the requirement that electric utilities must purchase electric energy from QFs. 16 U.S.C. § 824a-3(a)(2). In turn, PURPA requires state regulatory authorities to implement FERC’s must-purchase regulations. *Mississippi*, 456 U.S. at 751; 16 U.S.C. § 824a-3(f)(1); 18 C.F.R. §§ 292.300 *et seq.*

B. Procedural Background

This Commission has been engaged in an ongoing dispute related to PacifiCorp’s alleged “load pocket” problem ever since PacifiCorp filed its Advice No. 11-011 on June 27, 2011. PacifiCorp proposed very specific revisions to its Schedule 37 and its Commission-approved standard contract to address the load pocket issue. As described by PacifiCorp, the load pocket problem occurs when the generation of a prospective QF will exceed the load within the local load area of the QF’s point of delivery. In such circumstances, PacifiCorp proposed to allocate such third-party transmission costs to the QF. Numerous parties objected to Advice No. 11-011.

Since that time, the dispute has been presented in various forms, including: advice filing procedures without final resolution; then through legal briefing in Docket No. UE 235 without resolution; followed by pre-filed testimony, cross-examination, and post-hearing briefing in

Phase I of Docket No. UM 1610; additional pre-filed testimony and post-hearing briefing in Phase II of Docket No. UM 1610; and unsuccessful workshops to resolve the issue.

The primary direction the Commission has provided thus far was an abstract policy determination in its final order in Phase I of Docket No. UM 1610. *See Re Commission Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 17-23 (Feb. 24, 2014). The Commission explained as follows:

To answer the question of how costs imposed on a utility to arrange third-party transmission to transport QF output from receipt in a load pocket to load should be accounted for in a standard contract, we refer back to our discussion regarding imposed costs. We determine that when a QF located within a utility's BAA imposes integration costs on the utility, the avoided cost rates paid to the QF should be adjusted. We find this general principle—that avoided cost rates should be adjusted for costs imposed on a utility by the particular circumstances of a QF—to apply here.

In applying this principle here, we first conclude that our adopted method of determining avoided cost prices based on avoided proxy resources reflects full avoided costs. Second, we conclude that any third-party transmission costs incurred by a utility to move QF output from the point of delivery to load would be costs that are not included in the calculation of avoided cost rates in standard contracts, and therefore are costs that are additional to avoided costs. Third, we conclude 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. We find, however, that Staff and the parties did not fully address how to calculate and assign the third-party transmission costs that are attributable to the QF. We defer this issue to the second phase of these proceedings.

Id. at 22 (footnotes omitted).

Thus, the Commission determined that it was theoretically possible that certain QFs would deliver energy to points on PacifiCorp's system that would require PacifiCorp to incur some third-party transmission costs in excess of the underlying assumptions used to set the avoided cost rates. As the order notes, "Pacific Power's entire service territory is non-contiguous, and interconnected in places by third-party transmission." *Id.* at 21. However,

unlike the assignment of integration costs to QFs located in PacifiCorp's BAA referenced in Order No. 14-058, the determination of whether a certain QF imposes incremental third-party transmission costs on PacifiCorp, and in what amount, is a unique determination that must be made for each QF. The Commission determined that Staff and the other parties had not sufficiently addressed *how* to calculate and assign the third-party transmission costs attributable to a QF and deferred analysis of those questions to Phase II of Docket No. UM 1610. The individual nature of the inquiry and rare circumstances where the problem arises have presented problems in developing a reasonable policy on the point without inadvertently jeopardizing the viability of all prospective QFs.

PacifiCorp itself agrees that many QFs impose no third-party transmission costs on PacifiCorp. Many QFs will generate at levels well below minimum load levels in the load area, and therefore are easily designated as network resources with PacifiCorp Transmission. PacifiCorp itself acknowledges that the issue occurs is only in a "very specific and rather narrow context" where PacifiCorp Transmission cannot designate a new QF as a network resource under Network Integration Transmission Service Agreement between PacifiCorp ESM and PacifiCorp Transmission, triggering the need to investigate other options to integrate the power. PAC/1700, Griswold/12-14.¹

Additionally, PacifiCorp has acknowledged that it integrates a substantial amount of generation through use of third-party transmission that imposes no incremental cost on

¹ Notably, however, this last round of testimony from PacifiCorp (PAC/1700) was never admitted into the record because, as explained below, further discovery and responsive testimony were curtailed by PacifiCorp's motion to close the docket and the Commission's subsequent Order No. 18-181. In any case, the testimony may be used to the extent it contains concessions or demonstrates points of agreement between the parties.

PacifiCorp. Most notably, PacifiCorp uses a Network Integration Transmission Services Agreement with Bonneville Power Administration (“BPA”) to integrate a large amount of generation, which has no incremental cost for each new generating resource as its cost is tied to the amount of load served by the transmission.² PacifiCorp has provided a list of several Oregon QFs that are already designated as network resources under BPA agreement. The Joint QF Parties have attached PacifiCorp’s discovery responses regarding BPA network transmission hereto, including the admission that BPA network transmission imposes no incremental costs and the admission that PacifiCorp has used BPA network transmission to move Oregon QFs’ generation between load pockets. *See* Attachment 1 at pp. 2, 5-7. PacifiCorp further conceded it regularly uses the BPA network transmission to “transmit PacifiCorp-owned generation out of load pockets.” *Id.* at 3-4; *see also id.* at 1. If the QF can be designated as a network resource under the BPA agreement, then there would be no need to obtain more expensive third-party

² FERC explained in Order No. 888:

Network service permits a transmission customer to integrate and economically dispatch its resources to serve its load in a manner comparable to the way that the transmission provider uses the transmission system to integrate its generating resources to serve its native load. Because network service is load based, it is reasonable to allocate costs on the basis of load for purposes of pricing network service. This method is familiar to all utilities, is based on readily available data, and will quickly advance the industry on the path to non-discrimination.

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21540, 21,599 (May 10, 1996). Prior to Order No. 888, monopoly utilities had refused to allow third parties to use their systems with a network service and instead discriminated against comparable use to their third-party competitors by requiring the third parties to separately pay a charge for each resource and load pairing – similar to PacifiCorp’s proposed use of point-to-point transmission for load pocket QFs. *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking*, 60 Fed. Reg. 17,662, 17,677 (April 7, 1995).

point-to-point transmission service for the QF's generation. This further limits the narrow circumstances where the load pocket issue would legitimately result in incremental third-party transmission costs to PacifiCorp and presents further considerations in evaluating *how* to calculate and allocate incremental third-party transmission costs to an individual QF.

When the load-pocket issue was last reactivated at the conclusion of Phase II of Docket No. UM 1610, the Joint QF Parties sought discovery and depositions related to PacifiCorp's use of its extensive transmission assets for integration of PacifiCorp-owned generation. The Joint QF Parties sought to better understand PacifiCorp's available transmission assets in order to ensure that the method approved by the Commission would require PacifiCorp to maximize use of available transmission assets to integrate QF power – i.e. *how* to ascertain whether an individual QF would impose incremental third-party transmission costs and if so *how* to allocate those costs to the QF. Administrative Law Judge (“ALJ”) Kirkpatrick granted a motion to compel PacifiCorp's production of material related to BPA network transmission, reasoning “the Commission has not yet legally determined that PacifiCorp must secure long-term firm transmission to move QF energy out of a load pocket.” *ALJ Ruling*, OPUC Docket No. UM 1610, at 3-4 (Oct. 27, 2016). The ALJ's ruling relied on the position of OPUC Staff “that it is necessary to first determine what transmission options exist to move QF power out of load pockets to answer the Commission's question about how to assign third-party transmission costs.” *Id.* at 1.

However, on March 15, 2017, PacifiCorp moved to close the docket without obtaining any final resolution to the load pocket issue. According to PacifiCorp, the load pocket issue had proven to arise in very few individual instances. Despite the allegations in its Advice 11-011 and

Phases I and II of Docket No. UM 1610, PacifiCorp now conceded that “the anticipated need for the proposal has not materialized.” *PacifiCorp’s Motion to Close*, Docket No. UM 1610, at 1 (March 15, 2017). PacifiCorp proposed “to prospectively discontinue allocating the third-party transmission costs at issue in this proceeding to QFs.” *Id.* The Joint QF Parties objected only to the extent that PacifiCorp wished such dismissal would be without prejudice and might allow PacifiCorp to attempt to assess such transmission costs through some other unidentified process, such as the interconnection process. The matter was fully briefed on April 6, 2017.

After taking no action whatsoever for over a year, the Commission issued its Order No. 18-181 on May 23, 2018, where it denied PacifiCorp’s motion to close the docket. *Re Commission Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 18-181 (May 23, 2018). The Commission first explained the scope of the load pocket issue: “The third-party transmission costs at issue are the third-party transmission arrangements necessitated by PacifiCorp ESM's transmission service requests to deliver QF power that is (1) excess of local load, (2) out of a load pocket, and (3) to a different area of PacifiCorp's system.” *Id.* at 4. The Commission next clarified, “we determined in Order No. 14-058 that third-party transmission costs not accounted for in the avoided cost price calculation ‘must be assigned’ to the QF in order to comport with PURPA avoided cost principles.” *Id.* at 5. “In the event it becomes necessary to allocate these costs to QFs, we believe it is appropriate to have an approved mechanism in place to allow the utility to do so.” *Id.*

The Commission asked the parties to “further address” the use of two options for allocation of third-party transmission costs. *Id.* Those two options include:

- PacifiCorp’s initial proposal to procure long-term, firm, point-to-point third-party transmission under a transmission provider’s OATT for the entire term of a QF’s

PPA with assignment of the associated costs by PPA addendum to be consistent with PURPA.

- Staff’s modified proposal that PacifiCorp offer a QF locating in a load pocket an option to choose either a price for long-term, firm, point-to-point third-party transmission under a transmission provider’s OATT for the entire PPA term or a price for long-term, firm, point-to-point third-party transmission that would reset every five years.

Id. at 5-6. The Commission stated that a third option – CREA’s proposal to allow a QF to agree to limited voluntary curtailment in lieu of paying third-party transmission costs – would be best addressed “in a separate future investigation” because the Commission believed that issue would involve “significant legal and evidentiary issues.” *Id.*

ARGUMENT

The Joint QF Parties recommend that the Commission require PacifiCorp to provide QFs with both options identified in Order No. 18-181, and that the Commission clarify that the second option is a fixed-price option. Additionally, along with other important administrative issues related to implementation of this new policy, the Commission should also require PacifiCorp to develop a transparent and fair process and standard contract provisions for calculation of such incremental transmission costs for individual QFs. The Commission should direct PacifiCorp to work with the parties to develop new rate schedules and standard contract provisions following the Commission’s resolution of the disputed issues in this proceeding.

A. PURPA Requires a Fixed-Price Option

The Commission’s Order No. 18-181 is somewhat ambiguous as to whether it proposes to include a fixed-price option to a QF that is identified as a load pocket QF, but PURPA requires the Commission to offer each QF a fixed-price option. The Joint QF Parties have

repeatedly argued this point since the beginning of this load pocket dispute and again urge the Commission not to violate PURPA's requirements.

PURPA provides important guiding principles that the Commission must follow in resolving this issue. First, PURPA entitles the QF to compel the purchasing utility to accept and purchase the QF's entire net output made available to the purchasing utility. 16 U.S.C. § 824a-3(a)(2); 18 C.F.R. § 292.303(a). FERC has stated: (1) the QF's obligation to the purchasing utility is limited to delivering energy to the point of interconnection by the QF with that purchasing utility; (2) the QF is not required to obtain transmission service, either for itself or on behalf of the purchasing utility, in order to deliver its energy from the point of interconnection with the purchasing utility to the purchasing utility's load; and (3) the purchasing utility cannot curtail the QF's energy as if the QF were taking non-firm transmission service on the purchasing utility's system. *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, P 38 (2013). In *Pioneer Wind Park I*, however, FERC explained that PURPA allows for an adjustment to the avoided cost rates to account for transmission limitations on the purchasing utility's side of the QF delivery. *Id.* at P 41 n.79 (stating, "parties could, for example, agree to prices that reflect the new transmission project entering service, and also to alternative prices should the new transmission project not enter service").

Next, PURPA provides specific requirements for avoided cost rates. FERC's regulations mandate that utilities pay QFs a price (or a rate, e.g. \$/MWh) set at the utility's "full avoided cost," that is, the marginal cost the utility would otherwise pay to acquire additional energy and capacity. *Am. Paper Inst.*, 461 U.S. at 406, 413-17; *see also* 18 C.F.R. §§ 292.101(b)(6), 292.304(b).

The regulations also include three pricing options that must be offered to each QF. First, Section 292.304(d)(1) allows the QF to sell energy and capacity on an “as available” basis, without any contractual obligation to deliver power, “in which case the rates for such purchases shall be based on the purchasing utility’s avoided costs calculated at the time of delivery.” 18 C.F.R. § 292.304(d)(1). For example, a cogeneration facility that primarily serves the electrical needs of its industrial facility may choose to occasionally sell surplus energy to the utility without a contractual obligation. *See Puerto Rico Elec. Power Auth. v. FERC*, 848 F.2d 243, 247-48 (D.C. Cir. 1988).

In contrast, Section 292.304(d)(2) provides two *contractual* pricing options. It provides:

Each qualifying facility shall have the option . . . (2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the qualifying facility . . . be based on . . . (i) The avoided costs calculated at the time of delivery; or (ii) The avoided costs calculated at the time the obligation is incurred.

18 C.F.R. § 292.304(d)(2) (emphasis added). FERC explained that subpart (d)(2)(i) allows the QF to opt to contract “to receive the avoided costs determined at the time of delivery.” *Small Power Prod. and Cogeneration Facilities; Regulations Implementing Sec. 210 of the Pub. Util. Reg. Pol. Act of 1978*, Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980). But subpart (d)(2)(ii) “enables a qualifying facility to establish a *fixed contract price* for its energy and capacity at the outset of its obligation.” *Id.* (emphasis added). Such fixed-price rates will be lawful even if the fixed-price rate turns out, due to changed circumstances, to be different from the utility’s actual avoided costs at the time of delivery. 18 C.F.R. § 292.304(b)(5).

Section 292.304(d)(2)(ii) is critically important to QFs. FERC recognized that its regulations must provide prospective developers and owners of QFs with the option to enter into

long-term contracts with predictable prices. *See* 45 Fed. Reg. at 12,224. This option was intended to provide the “certainty” necessary to invest in a generation facility in the market controlled by reluctant utility purchasers. *Id.*

The regulation reflects Congressional intent. Congress recognized that ““cogenerators and small power producers are different from electric utilities, not being guaranteed a rate of return on their activities generally or on the activities vis a vis the sale of power to the utility.”” *Am. Paper Inst.*, 461 U.S. at 414 (quoting H. R. Conf. Rep. No. 95-1750, pp. 97-98 (1978)). Unlike traditional utilities that are legally entitled to charge end-use customers all prudently incurred costs of electric service, the QF’s ““risk in proceeding forward in the cogeneration or small power production enterprise is not guaranteed to be recoverable.”” *Id.* Accordingly, FERC’s regulation is intended “to reconcile the requirement that the rates for purchases equal the utilities’ avoided cost with the need for [QFs] to be able to enter into contractual commitments based, by necessity, on estimates of future avoided costs.” 45 Fed. Reg. at 12,224.

Since 1980, “FERC has ‘consistently affirmed the right of QFs to long-term avoided cost contracts or other legally enforceable obligations with rates determined at the time the obligation is incurred, even if the avoided costs at the time of delivery ultimately differ from those calculated at the time the obligation is originally incurred.’” *Allco Renewable Energy, Ltd. v. Mass. Elec. Co.*, 208 F. Supp. 3d 390, 398-400 (D. Mass. 2016) (quoting *JD Wind 1, LLC*, 130 FERC ¶ 61,127, 61,631 (Feb. 19, 2010), and holding that rate based on unknown, future market prices does not comply with 18 C.F.R. § 292.304(d)(2)(ii)).

Separately, Oregon law directs that this Commission must implement PURPA and it separately declares that QFs may elect to sell their output at fixed prices calculated at the time of

the obligation. ORS 758.525(2)(b). Thus, failure to provide each QF – including QFs identified as “load pocket” QFs – the opportunity for fixed-price compensation for the energy delivered to PacifiCorp violates federal and state law. Because incremental third-party transmission costs are an element of the purchasing utility’s forecasted avoided costs, the utility must offer to enter into a contract containing a fixed cost for that element of its avoided costs just the same as it must offer a fixed cost of all other elements of the avoided costs. PacifiCorp can no more force a time-of-delivery pricing on the QF for third-party transmission expenses than it can force a time-of-delivery pricing on the QF for any other elements of the avoided costs, such as natural gas prices or wholesale market prices.

PacifiCorp has incorrectly argued in this proceeding that QFs have no right to a fixed-price reduction to the avoided costs to account for PacifiCorp’s incremental third-party transmission costs because, according to PacifiCorp, off-system QFs must pay un-fixed third-party transmission costs. FERC has explained that under FERC’s PURPA rules the QF’s obligation is “*limited to delivering energy to the point of interconnection*” on the purchasing utility’s system. *See Pioneer Wind Park I*, 145 FERC ¶ 61,215, at P 38 (emphasis added). The QF’s transmission costs to deliver QF energy to PacifiCorp’s system are not part of the avoided costs and do not involve PacifiCorp in any way whatsoever. However, once the QF’s energy gets to the purchasing utility’s system, the QF has the right to compel the utility to purchase it at a fixed avoided cost rate. *See id.* If the delivery at that location will result in lower avoided costs than would exist without the load pocket problem, the utility may take the decreased value of the energy at that location into account in calculating the fixed avoided costs. *See id.* at P 41 & n. 79.

Therefore, the Joint QF Parties' proposal is to apply a forecasted price reduction to the otherwise applicable standard rates to the individual QF at the time of contracting. As CREA has previously demonstrated, PacifiCorp has already implemented a fixed-price reduction for the term of at least one QF PPA – the TMF Biofuels contract. *See* CREA/502, Skeahan/4; CREA/700, Skeahan/4; PAC/1300, Griswold/16. In over five years of ongoing proceedings regarding the load pockets, no party has persuasively rebutted the position that the utility must offer a fixed-price option to each QF.

In sum, PURPA requires that the Commission provide a fixed-price option, and the Commission should therefore include a fixed-price option among the alternatives offered to each load pocket QF.

B. The Commission May Also Provide Alternatives to a Fixed-Price Rate

The Commission may also adopt an alternative option for an avoided cost price reduction equal to PacifiCorp's incremental third-party transmission costs as calculated at the time of delivery. The Joint QF Parties would not object to PacifiCorp's proposal to assign the actual costs of incremental third-party transmission as those costs are incurred throughout the term of the PPA, so long as the QF is also offered a fixed-price option. Likewise, the Joint QF Parties support Staff's proposal to allow the QF to elect to sign a PPA that requires PacifiCorp to reevaluate the need for, and if still needed, the cost of incremental third-party transmission every five years, so long as that option is additional to an option to select a fixed price for the entire PPA term.

As noted above, PURPA allows QFs to agree to alternatives other than the fixed-price rate the QF could compel through PURPA's purchase obligation. Indeed, although few QFs

elect the option, FERC's PURPA rules explicitly require each QF be offered the choice to enter into a long-term contract with avoided cost rates calculated at the time of delivery. *See* 18 CFR § 292.304(d)(2)(i).

The record demonstrates that in some cases the QF may reasonably conclude that the time-of-delivery pricing makes sense because the actual costs of third-party transmission are likely to decrease in the future. *See* CREA/500, Skeahan/23-24. In some cases, the load pocket problem will present itself in only very limited circumstances. *Id.* Furthermore, the record demonstrates that PacifiCorp has the legal right to re-direct the points of receipt and delivery in its existing transmission rights to deliver QF output to load, which may reduce the time-of-delivery costs of third-party transmission attributable to the QF. *Id.* PacifiCorp has in fact re-directed under-utilized third-party transmission to deliver the output of the Three Mile Canyon Wind QF. CREA/502, Skeahan/1-2. Thus, PacifiCorp already possesses excess third-party transmission to address the problem at least some of the time. Additionally, PacifiCorp itself acknowledges that a large new load that comes online after the QF could completely eliminate the load pocket problem for the remainder of that QF's PURPA contract. *See* PAC/1300, Griswold/14. Thus, certain QFs may rationally elect real-time pricing, or a five-year update, as opposed to third-party transmission costs forecasted for the entire term at the time of execution of the PPA.

Assessing time-of-delivery transmission costs to the QF would require a new standard contract addendum to ensure that the accounting of such costs by PacifiCorp is reasonable. CREA/500, Skeahan/25; CREA/700, Skeahan/4-5. Thus, the Joint QF Parties recommend that,

if the QF elects to pay the actual transmission costs at the time of delivery, PacifiCorp must be contractually required to regularly provide a complete accounting of the actual costs.

C. The Commission Must Also Resolve Critical Administrative Issues to Ensure PacifiCorp Does Not Overcharge QFs for Third-Party Transmission Costs

Given the fact-specific nature of the need for, and cost of, incremental third-party transmission costs for an individual QF, the Commission will also need to establish strict rules PacifiCorp must follow in calculating such costs. As noted above, although PacifiCorp would need to investigate its transmission needs for every individual QF, it should be a rare circumstance where there are any incremental third-party transmission costs that could be lawfully allocated to a QF. Furthermore, the incremental third-party transmission may not be needed for the QF's full capacity, and there may be less expensive options to solve the load pocket issue. For example, PacifiCorp has agreed that has used BPA network transmission to transmit QF output at no incremental cost. *See* Attachment 1 at pp. 2, 5-7. Because PacifiCorp regularly uses the BPA network transmission to “transmit PacifiCorp-owned generation out of load pockets,” it must also consider the ability to use that transmission for QFs. *Id.* at 3-4; *see also id.* at 1. PacifiCorp also agrees that even where BPA long-term firm point-to-point transmission may be needed, there may be short distance discounts to the normally applicable transmission charges. *See* PAC/1700, Griswold/28. Determining whether there are incremental third-party transmission costs and in what amount will require a process to evaluate each QF's unique circumstances. If the process PacifiCorp must follow is not appropriately circumscribed, PacifiCorp will be able to use the process itself to frustrate development of any QF. The Commission should adopt strict rules to administer the load pocket issue.

First, the fixed-price reduction for third-party point-to-point transmission should be published and made available with the Company's avoided cost rate schedule, and thus subject to review and challenge along with other rate components at the time avoided cost rates are approved. As is the case with wind integration charges or other forecasted inputs that reduce avoided costs for certain QFs, the third-party transmission costs are an element of the long-term avoided cost rates and therefore must be subjected to the same evaluation and regulatory scrutiny of other avoided cost components. According to PacifiCorp's prior filings, it appears that PacifiCorp will most often find the need for long-term firm point-to-point transmission with BPA when a load pocket issue arises. Therefore, the Commission should approve a rate (\$/MWh) of fixed price reduction for each MW of BPA long-term firm point-to-point transmission capacity for different QF resource types, which would be used in the case where the only option is BPA long-term firm point-to-point transmission. In cases where some other type of third-party transmission is needed, PacifiCorp would have to propose an adjustment to the default costs of BPA long-term firm point-to-point transmission approved by the Commission.

Additionally, the Commission should ensure that PacifiCorp's Schedule 37 and standard contract explain that the third-party point-to-point transmission rate deduction's applicability would be determined on a contract-by-contract basis. As the Joint QF Parties understand PacifiCorp's testimony, a final determination on the extent of third-party transmission needed cannot necessarily be made until after the PPA is executed and PacifiCorp lodges its request to designate the QF as a network resource with either PacifiCorp Transmission or BPA Transmission. *See* PAC/1700, Griswold/21-22. Schedule 37 and the standard contract should impose strict and enforceable deadlines to complete this process and should require complete

transparency to the studies associated with this determination, as well as an opportunity for the QF to discuss the studies and assumptions thereunder with the transmission personnel. Absent such express rights in the standard contract, the QF may have no control over the transmission studies because PacifiCorp ESM would be the formal “transmission customer” that would ordinarily control such transmission studies. *See id.*

If the PacifiCorp determines that incremental third-party transmission costs should be assigned to the QF, the Schedule 37 and standard contract should require that PacifiCorp will provide the QF with a copy of the studies performed by PacifiCorp Transmission and any other applicable third-party transmission providers that PacifiCorp relies upon to support the determination of the need for third-party point-to-point transmission for PacifiCorp to integrate the QF’s output. There must also be an unambiguous right for the QF to challenge PacifiCorp’s determination of the need for such third-party transmission in a forum with jurisdiction to resolve such dispute. Otherwise, PacifiCorp will be left to make whatever determination it wishes without any oversight.

Finally, the Commission should also ensure that PacifiCorp does not unfairly assign third-party transmission costs to QFs that already have an existing PPA. According to PacifiCorp’s own testimony, a QF that has been granted network resource status under an existing PPA with PacifiCorp remains a network resource and is not subject to additional transmission costs upon renewing its PPA. PacifiCorp’s witness explained:

Under the OATT, if the QF has been granted Network Resource (NR) status, it remains a NR and not subject to additional transmission costs. Of course, this is subject to the QF remaining a QF selling its output to PacifiCorp and the NR designation is renewed in accordance with the OATT at renewal of the PPA. A second aspect is whether QFs will continue to be treated as NRs upon renewal of their PPA. As noted above, subject to the QF remaining a QF selling its output to

PacifiCorp and the NR designation renewed in accordance with the OATT at renewal of the PPA, there would be no discontinuation of the NR status.

PAC/1700, Griswold/28-29. The approved Schedule 37 and standard contract should therefore explain the minimal requirements to maintain network resource status for an existing QF.

If the Commission elects to impose third-party transmission costs on any QFs, it is critically important that these basic administrative issues be resolved and clarified to ensure that PacifiCorp does not abuse the new policy to allocate such costs to certain QFs.

III. CONCLUSION

The Joint QF Parties respectfully requests that the Commission adopt the policies recommended herein as more fully outlined in the Introduction and Summary.

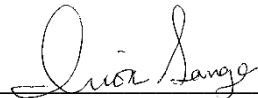
Dated: November 29, 2018.

Respectfully submitted,



Gregory M. Adams (OSB No. 101779)
Peter J. Richardson (OSB No. 066687)
Richardson Adams, PLLC
515 North 27th Street
Boise, ID 83702
Telephone: 208-938-7900
Fax: 208-938-7901
greg@richardsonadams.com
peter@richardsonadams.com

Of Attorneys for the Community Renewable
Energy Association



Irion Sanger
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Renewable Energy
Coalition

ATTACHMENT 1

PacifiCorp's Data Responses Related to Use of Bonneville Power
Administration Network Integration Transmission Services Agreement
to Export Load Pocket Generation

CREA Data Request 15.1

Please provide PacifiCorp's network integration transmission service agreement with BPA. Please explain in detail the reasons why PacifiCorp would choose to use the BPA network integration transmission service agreement with BPA instead of using BPA point-to-point transmission for its use of BPA's transmission system.

Response to CREA Data Request 15.1

PacifiCorp objects to CREA Data Request 15.1 as outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding transmission arrangements for PacifiCorp-owned generation. This proceeding is limited to the issue of calculating and assigning the third-party transmission costs attributable to qualifying facilities (QF) in load pockets. Without waiving these objections, PacifiCorp responds as follows:

Please refer to Attachment CREA 15.1, which provides the Company's network integration transmission service (NITS) agreements with the Bonneville Power Administration (BPA).

As described in the Company's response to CREA Data Request 11.7, PacifiCorp uses BPA NITS to serve some of the Company system load pockets that are isolated from, or on a constrained path within the Company transmission system. Under the BPA NITS, BPA has the responsibility to plan the transmission and infrastructure upgrade needs for load growth in these isolated pockets that may also be on a constrained path. Use of the BPA NITS also mitigates the risk of point-to-point (PTP) transmission being unavailable.

CREA Data Request 15.2

When PacifiCorp designates a new network resource under its BPA network integration transmission service agreement, what are the incremental charges to PacifiCorp to move that new resource's output to designated network loads under the agreement? Are these incremental charges to PacifiCorp higher or lower than the incremental charges to PacifiCorp for acquiring BPA point-to-point long-term firm transmission for the same resource. Please provide reference to the BPA tariff or agreement in support of the response.

Response to CREA Data Request 15.2

PacifiCorp objects to CREA Data Request 15.2 as outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding the treatment of PacifiCorp-owned generation. This proceeding is limited to the issue of calculating and assigning third-party transmission costs attributable to qualifying facilities (QF) in load pockets. Without waiving these objections, PacifiCorp responds as follows:

When PacifiCorp designates a new network resource under its Bonneville Power Administration (BPA) network integration transmission service (NITS) agreement, there are no incremental charges to move the new resource's output to designated network loads under the agreement. Please refer to BPA's current transmission rate schedules (2016 Transmission, Ancillary, and Control Area Service Rate Schedules and General Rate Schedule Provisions (fiscal year 2016-2017)) by utilizing the following website link:

<https://www.bpa.gov/Finance/RateCases/BP-16/Documents/BP-16%20Final%20Rate%20Schedules%20-%20Transmission%20-%20WEB.pdf>

and/or please refer to Section III – Network Integration Transmission Service (commencing page 67) of BPA's Open Access Transmission Tariff (OATT) by utilizing the following website link:

https://www.bpa.gov/transmission/Doing%20Business/Tariff/Documents/bpa_oatt.pdf

CREA Data Request 15.3

Refer to the PacifiCorp load pockets identified in response to CREA data request 2.4. For each load pocket, please identify:

- (a) The balancing authority within which the load pocket is located.
- (b) Whether any PacifiCorp load in the load pocket is served by PacifiCorp's BPA network integration transmission service agreement.
- (c) Please identify all PacifiCorp-owned generating resources serving load in the load pocket and the transmission provider and type of transmission used to deliver the resource's output to the load pocket.
- (d) Please identify whether PacifiCorp's network integration transmission service agreement with BPA could not be used to transmit generation out of the load pocket.

Response to CREA Data Request 15.3

- (a) Referencing the load pockets identified in the Company's response to CREA Data Request 2.4, please refer to Attachment CREA 15.3.
- (b) PacifiCorp objects to CREA Data Request 15.3(b) as outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, the Company responds as follows:

Referencing the load pockets identified in the Company's response to CREA Data Request 2.4, please refer to Attachment CREA 15.3.

- (c) PacifiCorp objects to CREA Data Request 15.3(c) as outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. This proceeding is limited to the issue of calculating and assigning third-party transmission costs attributable to qualifying facilities (QF) in load pockets. Information regarding PacifiCorp-owned generating resources is not relevant to this issue.
- (d) PacifiCorp objects to CREA Data Request 15.3(d) as outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. This proceeding is limited to the issue of calculating and assigning third-party transmission costs attributable to QFs in load pockets. Information regarding PacifiCorp-owned generating resources is not relevant to this issue. Without waiving these objections, the Company responds as follows:

PacifiCorp identifies that its Network Integration Transmission Service (NITS) agreement with Bonneville Power Administration (BPA) is used to transmit PacifiCorp-owned generation out of the load pockets.

CREA Data Request 15.4

Please identify all network resources that have been designated under PacifiCorp's network integration transmission agreement with BPA in the past five years. For each resource, please identify:

- (a) The designated network load served by the resource and geographic location of that load, including which PacifiCorp "load pocket" within which the load is located. For purposes of the response to this request please rely on the load pockets identified by PacifiCorp in response to CREA data request 2.4.
- (b) The utility to which the resource is directly interconnected and the BA within which the point of interconnection is located.
- (c) Whether the resource is PacifiCorp-owned, QF, or non-QF PPA.

Response to CREA Data Request 15.4

PacifiCorp objects to CREA Data Request 15.4 as unduly burdensome, outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. This proceeding is limited to the issue of calculating and assigning third-party transmission costs attributable to qualifying facilities (QF) in load pockets. Therefore, this response is limited to Oregon QFs located in load pockets. Without waiving these objections, PacifiCorp responds as follows:

- (a) Please refer to Attachment CREA 15.4.
- (b) Please refer to Attachment CREA 15.4.
- (c) Please refer to Attachment CREA 15.4.

Network Resources under PacifiCorp / BPA NITS Agreement	Designated Network Load Resource Serves	Geographic Location of Load	PacifiCorp Load Pocket	Utility Interconnection	Balancing Authority (BA)	Resource Type
Chopin Wind, LLC	PP retail load	Pendleton, Oregon	Pendleton	PP	PACW	QF
City of Astoria	PP retail load	Astoria, Oregon	Knappa Svenson	PP	BPA	QF
Evergreen BioPower, LLC	PP retail load	Scio, Oregon	Santiam	PP	PACW	QF
Farm Power Misty Meadow, LLC	PP retail load	Astoria, Seaside, Cannon Beach areas in Oregon	N Coast	BPA	PACW	QF
Farmers Irrigation District	PP retail load	Hood River, Oregon	Hood River	PP	PACW	QF

Notes:
 BPA = Bonneville Power Administration
 NITS = Network Integration Transmission Service
 PACW = PacifiCorp West
 PP = Pacific Power
 QF = Qualifying Facility

CREA Data Request 15.5

Has PacifiCorp ever requested to designate a QF under contract with PacifiCorp as a designated network resource under PacifiCorp's network integration transmission service agreement with BPA? If no, please explain why not. If yes, please identify all such QFs and instances in which they were designated as a network resource under PacifiCorp's network integration transmission service agreement with BPA.

Response to CREA Data Request 15.5

Yes, PacifiCorp has requested to designate a qualifying facility (QF) under contract with PacifiCorp as a designated network resource under PacifiCorp's Network Integration Transmission Service (NITS) agreement with Bonneville Power Administration (BPA). These resources are identified in the Company's response to CREA Data Request 15.4.