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November 29, 2018

***VIA ELECTRONIC FILING***

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

Attn: Filing Center

**RE: UM 1610—PacifiCorp's Opening Brief**

PacifiCorp d/b/a Pacific Power encloses for filing its Opening Brief in the above-referenced proceeding.

If you have questions about this filing, please contact Natasha Siores, Manager, Regulatory Affairs, at (503) 813-6583.

Sincerely,

A handwritten signature in black ink, appearing to be "Etta Lockey", written over a horizontal line.

Etta Lockey  
Vice President, Regulation

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1610**

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Investigation Into Qualifying Facility  
Contracting and Pricing.

**PACIFICORP'S OPENING BRIEF**

**November 29, 2018**

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## I. INTRODUCTION

PacifiCorp d/b/a Pacific Power submits this opening brief to the Public Utility Commission of Oregon (Commission) in accordance with the Prehearing Conference Memorandum issued on October 18, 2018. This brief addresses the single, narrow issue remaining in this docket: “*how*—not whether—a utility should assign third-party transmission costs” to qualifying facilities (QFs) when those costs are incurred to move QF generation out of a load pocket.<sup>1</sup> The Commission directed the parties to address two proposals for recovery of third-party transmission costs:

- PacifiCorp’s initial proposal to procure long-term, firm, point-to-point third-party transmission under a transmission provider’s Open Access Transmission Tariff (OATT) for the entire term of a QF’s power purchase agreement (PPA) with assignment of the associated costs by PPA addendum to be consistent with the Public Utility Regulatory Policies Act (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.<sup>2</sup>

PacifiCorp supports either proposal because both, when properly implemented, create a pass-through mechanism to ensure that customers are not harmed by the QF’s decision to deliver its output into a transmission-constrained area, and that the QF pays no more than the actual third-party transmission costs incurred. The company’s support for Staff’s proposal, however, is based on its understanding that the pricing for long-term, firm point-to-point transmission service under both proposals is the same because it is set at the third-party transmission provider’s published transmission rate, as required by the third-party provider’s

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<sup>1</sup> *In the Matter of the Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 18-181 at 5 (May 23, 2018) (emphasis in original).

<sup>2</sup> Order No. 18-181 at 5-6.

OATT and as updated from time to time as determined by that third-party transmission provider. The difference between the two proposals, therefore, is that: (1) PacifiCorp’s initial proposal would require that a specified amount of point-to-point transmission service capacity be procured and set for the entire term of the PPA; and (2) Staff’s modified approach would require that a specified amount of point-to-point transmission service capacity be procured in five-year increments, with restudies at the end of each five-year term to determine whether and how much point-to-point transmission service *capacity* is necessary for the next five-year increment. Thus, the price reset under Staff’s proposal occurs through a reset, if any, of the required transmission capacity. Although the company believes either proposal is reasonable, based on the company’s understanding of how the price reset would occur under Staff’s approach, PacifiCorp believes that Staff’s alternative is preferable because of the additional flexibility it provides.

## II. BACKGROUND

### A. PURPA customer indifference mandate.

PURPA requires utilities to purchase output from QFs,<sup>3</sup> at no more than the utilities’ avoided cost price.<sup>4</sup> The Federal Energy Regulatory Commission (FERC) has underscored that the avoided cost requirement is designed to leave utility customers “indifferent” as to whether the utility purchases from the QF or uses its more traditional sources of power.<sup>5</sup>

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<sup>3</sup> 16 U.S.C. § 824a-3(a); 18 C.F.R. § 292.303(a).

<sup>4</sup> 16 U.S.C. § 824a-3(b), (d); 18 C.F.R. § 292.304; *see also* Conference Report to accompany H.R. 4018 at 98 (Oct. 6, 1978) (stating that PURPA intended to set an “upper limit” on price utilities can be required to pay).

<sup>5</sup> *S. Cal. Edison Co., et al.*, 71 FERC ¶ 61,269, 62,080 (1995), overruled on other grounds, *Cal. Public Utilities Comm’n*, 133 FERC ¶ 61,059 (2010).

This customer-indifference standard is firmly established in Oregon and the Commission has repeatedly emphasized that its implementation of PURPA must not cause customer harm.<sup>6</sup>

**B. QF siting decisions can harm customers by imposing costs that the utility would not otherwise incur and that are not accounted for in avoided cost pricing.**

In Oregon, PacifiCorp’s system includes load pockets, which are “areas [of] non-contiguous service territory that are reliant, either partially or entirely, on third-party transmission.”<sup>7</sup> PacifiCorp cannot control where a QF chooses to construct its project, and when a QF chooses to site its project in a load pocket, it can cause an excess generation condition if there is insufficient load within the load pocket to absorb the additional QF generation.<sup>8</sup> When this occurs, PacifiCorp must transmit the excess power out of the load

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<sup>6</sup> See, e.g., *In the Matter of Portland Gen. Elec. Co.*, Docket No. UM 1894, Order No. 18-025 at 3 (2018) (“In implementing PURPA, we have, on a number of occasions, reaffirmed our intention ‘to encourage the economically efficient development’ of QFs, ‘while protecting ratepayers by ensuring that utilities pay rates equal to that which they would have incurred in lieu of purchasing QF power.’ Our orders implementing PURPA reflect our efforts to balance encouraging QF development with maintaining ratepayer indifference.”) (internal citation omitted); *In the Matter of the Investigation into Electric Utility Tariffs for Cogeneration and Small Power Production Facilities*, Docket No. R-58, Order No. 81-319 at 3 (May 6, 1981) (stating goal of PURPA is “to provide maximum economic incentives for development of qualifying facilities while insuring that the costs of such development do not adversely impact utility ratepayers who ultimately pay these costs”); Order No. 05-584 at 11 (May 13, 2005) (“We seek to provide maximum incentives for the development of QFs of all sizes, while ensuring that ratepayers remain indifferent to QF power by having utilities pay no more than their avoided costs.”); Docket No. UM 1129, Order No. 06-538 at 37 (Sept. 20, 2006) (“[O]ur overriding goals in this docket are to encourage QF development, while ensuring that ratepayers are indifferent to QF power.”); Docket No. UM 1129, Order No. 07-360 at 1 (Aug. 20, 2007) (“This Commission’s goal is to encourage the economically efficient development of QFs, while protecting ratepayers by ensuring that utilities incur costs no greater than they would have incurred in lieu of purchasing QF power (avoided costs)”); *In the Matter of the Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014) (“We first return to the goal of this docket: to ensure that our PURPA policies continue to promote QF development while ensuring that utilities pay no more than avoided costs.”).

<sup>7</sup> Order No. 14-058 at 17; PAC/1000, Griswold/22 (“The Company’s Oregon service territory is not continuous. Rather, it is composed of multiple non-adjacent allocated service territories across the state—some large, some small—all interconnected by transmission lines. In some instances, the Company’s transmission function (PacifiCorp Transmission) controls the transmission system interconnecting elements of the Company’s larger service territory. In other cases, the Company purchases service across transmission owned by a third party in order to deliver (or export) generation to (or from) an isolated portion of its service territory. Many of these agreements are legacy transmission agreements developed for the one way delivery of power into a load and not for exporting power out of the area where generation may exceed load. The Company refers to these areas that are entirely or partially reliant on third-party transmission as ‘load pockets.’”).

<sup>8</sup> PAC/1700, Griswold/18-20; Order No. 14-058 at 17-18.

pocket using third-party transmission.<sup>9</sup> This imposes incremental third-party transmission costs that PacifiCorp would not incur but for the QF's unilateral siting decision.<sup>10</sup> If the incremental transmission costs are not paid by the QF, then PacifiCorp's retail customers bear the costs, thereby violating PURPA's strict customer indifference requirement.<sup>11</sup>

**C. The Commission required QFs to pay for incremental third-party transmission to maintain customer indifference.**

Because of the potential customer harm arising from QFs delivering to load pockets, in 2011 PacifiCorp proposed revisions to Schedule 37 to address excess generation conditions that can result from a QF siting in a load pocket.<sup>12</sup> The matter was initially docketed as UE 235.

In parallel with docket UE 235, the Commission opened generic docket UM 1610 to address a variety of different issues related to utility purchases from QFs, and PacifiCorp's third-party transmission cost-allocation issue from docket UE 235 was included among those issues that would be addressed in the first phase of the proceeding.<sup>13</sup>

In docket UM 1610, PacifiCorp argued that the costs associated with third-party transmission should be allocated to the QF on an individual project basis, by reflecting the actual costs of the third-party transmission arrangements in an addendum to the standard contract executed for the particular QF.<sup>14</sup> In Order No. 14-058, which concluded Phase I of docket UM 1610, the Commission found that "avoided cost rates should be adjusted for costs

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<sup>9</sup> Order No. 14-058 at 17-18, 21.

<sup>10</sup> Order No. 14-058 at 17-18, 21.

<sup>11</sup> Order No. 14-058 at 17-18.

<sup>12</sup> PAC/1700, Griswold/12.

<sup>13</sup> See Order No. 14-058 at 2, 17-23.

<sup>14</sup> Order No. 14-058 at 17.

imposed on a utility by the particular circumstances of a QF.”<sup>15</sup> Based on this finding, the Commission concluded:

(1) “our adopted method of determining avoided cost prices based on avoided proxy resources reflects full avoided costs;”

(2) “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;” and

(3) “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.”<sup>16</sup>

The Commission found, 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” and therefore deferred that issue to Phase II of docket UM 1610.<sup>17</sup>

The issue was not ultimately resolved in Phase II of docket UM 1610; the Commission instead directed parties to work together to resolve how to calculate and assign third-party transmission costs attributable to a QF in load pockets.<sup>18</sup>

**D. The Commission affirmed QF responsibility for third-party transmission costs and narrowed the scope of this phase of docket UM 1610.**

To resolve a dispute over the scope of this phase of the case, in Order No. 18-181, the Commission further clarified the issue in this phase of the case and confirmed its narrow scope. The Commission made clear that the “issue we now must address is *how*—not whether—a utility should assign third-party transmission costs.”<sup>19</sup> The Commission

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<sup>15</sup> Order No. 14-058 at 22.

<sup>16</sup> Order No. 14-058 at 22.

<sup>17</sup> Order No. 14-058 at 22 (emphasis added).

<sup>18</sup> *In the Matter of the Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016).

<sup>19</sup> Order No. 18-181 at 5 (emphasis in original).

confirmed its prior ruling that, if these costs are not allocated to QFs, there is the “potential to unnecessarily shift costs to customers.”<sup>20</sup> And, “[i]n 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.”<sup>21</sup> But the Commission also limited the scope of the proceeding to address only the following two proposals for assigning third-party transmission costs to QFs:

- 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.<sup>22</sup>

Following the Commission’s order narrowing the scope of the case, the ALJ adopted a procedural schedule that called for two rounds of simultaneous briefing.

### **1. PacifiCorp’s proposal.**

PacifiCorp proposes that it will secure the “specified amount of long-term, firm point-to-point transmission for the term of the PPA from the relevant third-party transmission provider at its published rates, and bill[] the QF for the actual costs incurred on a monthly basis.”<sup>23</sup> Under this proposal, the QF would pay the transmission costs as reflected in the third-party transmission provider’s (not PacifiCorp’s) OATT (*i.e.*, “at its published rates”<sup>24</sup>),

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<sup>20</sup> Order No. 18-181 at 5.

<sup>21</sup> Order No. 18-181 at 5.

<sup>22</sup> Order No. 18-181 at 5-6.

<sup>23</sup> PAC/1700, Griswold/4.

<sup>24</sup> PAC/1700, Griswold/4.

but those costs will periodically change over the duration of the PPA as the third-party transmission provider modifies its transmission rates.<sup>25</sup> For example, if the third-party transmission provider is the Bonneville Power Administration (BPA), the transmission pricing used to determine the third-party costs passed through to the QF will change whenever BPA has a rate case and modifies its tariff (which occurs every two years). PacifiCorp's proposal, therefore, includes an addendum to the PPA that would describe the pass-through of transmission costs paid by PacifiCorp to the third-party transmission provider based on the pricing set forth in the third-party transmission provider's OATT. The addendum would *not* have a pre-determined dollar-per-megawatt-hour transmission price that would be in effect for the life of the PPA because PacifiCorp cannot enter into a point-to-point transmission agreement with the third-party transmission provider that locks in pricing at the front end for the life of the transmission agreement.<sup>26</sup>

In addition, under PacifiCorp's proposal, the company would obtain firm, point-to-point transmission based on the incremental third-party transmission capacity required at the time the PPA is executed. For example, if the QF's decision to site its project in a load pocket requires PacifiCorp to obtain 10 MW of incremental third-party transmission based on

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<sup>25</sup> See PAC/1700, Griswold/4 ("ESM secures the PacifiCorp Transmission-specified amount of long-term, firm point-to-point transmission for the term of the PPA from the relevant third-party transmission provider at its published rates, and bills the QF for the actual costs incurred on a monthly basis.").

<sup>26</sup> PAC/1700, Griswold/15 ("In securing this transmission service, ESM must act in accordance with the terms and conditions of the transmission provider's OATT, the same as any other party seeking transmission service from a FERC-jurisdictional transmission provider.").

the transmission service study,<sup>27</sup> both PacifiCorp’s transmission service agreement with the third-party transmission provider and the PPA addendum would lock in that 10 MW of transmission service *capacity* for the duration of the PPA.

## **2. Staff’s modified proposal.**

Staff’s modified proposal would allow the QF to choose either PacifiCorp’s proposal (discussed above) or a similar proposal that, as described by the Commission, would set a “price for long-term, firm, point-to-point third-party transmission that would reset every five years.”<sup>28</sup> PacifiCorp understands that the price reset under Staff’s proposal would occur through a reset of the transmission capacity, if any, needed to wheel the QF power out of the load pocket because, as discussed above, the company cannot lock in transmission pricing for five years and then reset it when the five-year term rolls over. This understanding conforms to the transmission products available in the market and industry business practices.

Going back to the example discussed above where the QF required 10 MW of third-party transmission capacity, PacifiCorp understands that Staff’s proposal would allow the company to re-study the transmission service request every five years to determine if 10 MW of transmission is still required. If, for example, re-study demonstrates that only 5 MW of transmission service capacity is required to address excess generation conditions, then the

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<sup>27</sup> PacifiCorp’s transmission function makes the determination regarding whether the addition of a QF resource to a load pocket creates an excess generation situation when PacifiCorp’s transmission function studies PacifiCorp’s merchant function’s (energy supply management or ESM) transmission service request to move the QF power to load. PacifiCorp ESM submits this transmission service request in the form of a request to designate the QF PPA as a network resource (DNR) under the Network Integration Transmission Service Agreement (NITSA) between PacifiCorp transmission and PacifiCorp ESM, in accordance with PacifiCorp transmission’s Federal Energy Regulatory Commission (FERC) Open Access Transmission Tariff (OATT). This DNR request can be submitted only when the associated PPA is fully negotiated between PacifiCorp and the QF. Where the addition of a new DNR would cause an excess generation condition in the load pocket, PacifiCorp transmission may still be able to grant PacifiCorp ESM’s DNR request contingent on third-party transmission system arrangements sufficient to move excess power from the load pocket to other areas of PacifiCorp transmission’s system to serve load.

<sup>28</sup> Order No. 18-181 at 6.

company would modify its transmission service agreement with the third-party transmission provider from 10 MW to 5 MW, and the transmission service charges passed through to the QF under PPA addendum would be also be reduced accordingly. Thus, under either PacifiCorp's or Staff's proposal the transmission price on a dollars-per-megawatt-hour basis is the same (because the pricing must follow the OATT and cannot be locked-in), but the *volume* of incremental transmission capacity may change under Staff's proposal, which would then reset the transmission charges paid by the QF.

### III. ARGUMENT

Both proposals identified by the Commission produce reasonable mechanisms that pass through incremental third-party transmission costs to QFs. Both are straightforward and easily implemented through an addendum to the QF PPA. Moreover, both proposals comply with all relevant federal transmission requirements, including OATT processes and business practices, and are consistent with standard industry practice whereby transmission costs are assessed at tariffed rates.<sup>29</sup>

Most importantly, both proposals maintain customer indifference because PacifiCorp's customers pay an avoided cost for QF power and are not exposed to unnecessary price risk resulting from the acquisition of incremental third-party transmission service.<sup>30</sup> The proposals are also fair to QFs because a QF pays nothing more than the actual cost incurred for the third-party transmission service necessitated by the QF's project.<sup>31</sup> The proposals are straightforward pass-through mechanisms whereby the QF will pay the third-

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<sup>29</sup> PAC/1700, Griswold/3.

<sup>30</sup> PAC/1700, Griswold/3-4, 30.

<sup>31</sup> PAC/1700, Griswold/3-4, 30.

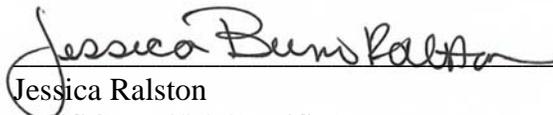
party transmission cost, as reflected in the transmission provider's OATT over the life of the PPA—no more and no less.

While both proposals are reasonable, Staff's alternative provides greater flexibility to the company to monitor ongoing changes in the load and generation balance of its system and better ensures that the company secures only the third-party transmission service required to move the QF generation out of the load pocket. Therefore, based on PacifiCorp's understanding of Staff's proposal, the company prefers Staff's approach because it provides additional flexibility to reevaluate and adjust as appropriate the third-party transmission capacity requirements over the life of the PPA. If Staff's proposal differs from the company's understanding, however, it should be rejected in favor of the company's proposal.

#### **IV. CONCLUSION**

PacifiCorp supports either proposal described by the Commission in Order No. 18-181 for recovering third-party transmission costs from QFs that impose additional costs due to their chosen delivery point. Either proposal ensures customer indifference and, subject to the pricing clarification described above, both proposals are consistent with the transmission products available to PacifiCorp.

Respectfully submitted this 29<sup>th</sup> day of November, 2018.

  
Jessica Ralston  
PacifiCorp d/b/a/ Pacific Power  
Attorney for PacifiCorp