

**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

RULING

DISPOSITION: MOTION TO COMPEL PARTIALLY GRANTED

**I. OVERVIEW**

The Renewable Energy Coalition (Coalition) requests that PacifiCorp, dba Pacific Power, be ordered to provide full and complete answers to several data requests (11.1, 11.2, 11.3, 11.7, 11.8, 11.9, 11.12, 12.2, 12.3, and 12.4). PacifiCorp generally counters that the Coalition's data requests are overly broad, unreasonably burdensome, and seek information irrelevant to the narrow issue assigned by the Commission in Order No. 16-174 regarding how to calculate and assign third-party transmission costs attributable to a qualifying facility (QF). In reply, the Coalition responds that "[i]n order to know **how** to assign third-party transmission costs, the parties must first understand **what types** of third-party transmission costs should be purchased."<sup>1</sup> The Coalition accuses PacifiCorp of assuming the Commission has already decided that the long-term, point-to-point transmission is the only transmission option available to move QF energy out of a load pocket. The Coalition argues that "PacifiCorp should not be permitted to use lower cost transmission alternatives for its own generation and other purchased power while requiring QFs to pay for the most expensive transmission option available."<sup>2</sup>

On October 12, 2016, Staff filed a Status Report in this proceeding. Staff concludes 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. Staff summarizes PacifiCorp's opposition to the Coalition's data requests as "frustration" that "appears to be based, at least in part, on PacifiCorp's belief that there is no factual issue as to what transmission options are actually available to PacifiCorp."<sup>3</sup>

<sup>1</sup> Reply to PacifiCorp's Response to Renewable Energy Coalition's Motion to Compel Phase II – Load Pockets at 1 (**emphasis** in original).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> Staff Status Report (Oct 12, 2016) at 2.

## II. LEGAL STANDARD

The legal standard for discovery is whether the information sought is relevant. OAR 860-001-0450 provides that relevant evidence must: (1) tend to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence; and (2) be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.

## III. DISCUSSION

### A. Data Requests Seeking Information about all PacifiCorp PPAs with QFs

The Coalition seeks copies all of PacifiCorp's PPAs with QFs in any state since the passage of PURPA, as well as all associated agreements including PPA amendments, transmission arrangements, and settlement agreements (DR 11.1). With regard to each PPA, the Coalition also wants to know whether the QF is (or was) located in a load pocket and if so, about any contractual arrangements to wheel the generation out of the load pocket (DR 11.2). The Coalition also asks PacifiCorp to identify any rights to curtail a QF's generation (DR 11.3).

The Coalition asserts that it is relevant to review all of PacifiCorp's PPAs with QFs to determine the total scope of PacifiCorp arrangements with load pocket QFs, reminding that PURPA and the OATT are national in scope. Although the Commission has ruled that QFs are responsible for third-party transmission costs, the Coalition argues that the Commission has not decided what type of third-party transmission arrangements are required. The Coalition contends that PacifiCorp can use lower cost options than firm point-to-point transmission to wheel QF power out of a load pocket, and claims it is therefore relevant to explore other transmission options that may have been delineated in non-Oregon PPAs. The Coalition points out that a QF was allowed in another case to explore PacifiCorp's transmission arrangements in non-Oregon PPAs and asks for the opportunity to also do so in this docket.<sup>4</sup> Although the Coalition agrees there are limitations on a utility's ability to curtail a QF, the Coalition contends that a QF has the right to enter into a PPA allowing curtailment, and argues that it is appropriate to explore whether PacifiCorp has entered into such a contract with a QF.

PacifiCorp responds that PPAs with QFs not located in load pockets are outside the scope of this proceeding because third-party transmission arrangements would not be addressed in such PPAs. PacifiCorp also argues that PPAs with QFs located in load pockets outside of Oregon are irrelevant to the issue of how to calculate and assign third-party transmission costs for QFs in Oregon load pockets. Finally, PacifiCorp states that it "has serious concerns regarding suggestions that it be required to use curtailment as an alternative to purchasing long-term, firm transmission service."<sup>5</sup> PacifiCorp asserts that

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<sup>4</sup> Coalition Motion to Compel, at 8, citing Docket UM 1742, Ruling at 1 (Nov 19, 2015).

<sup>5</sup> PacifiCorp's Response to Motion to Compel, at 3.

FERC precedent prohibits the curtailment of QF resources except under narrow circumstances.<sup>6</sup>

I partially grant the Coalition's motion with regard to DR 11.1, DR 11.2, and DR 11.3. The Coalition is entitled to investigate the full array of PacifiCorp's contracts with QFs that have ever been in load pockets or have been allowed curtailment rights. PacifiCorp must respond to provide PPAs with QFs in any state since the passage of PURPA (together with the requested associated agreements) that is (or was) located in a load pocket or is (or was) allowed curtailment rights.

**B. Data Requests Seeking Information about Transmission Arrangements and Curtailment Rights for Non-QF Resources**

In data requests 11.7, 11.8, 11.9, 11.12, and 12.2, the Coalition seeks information about third-party transmission arrangements to move PacifiCorp's own generation to load, including generation that is located in load pockets, including those identified in PacifiCorp's recently completed request for proposal (RFP), or that results from front-office transactions, or between non-contiguous portions of PacifiCorp's service territory. The Coalition contends that this information is relevant because PacifiCorp is not allowed to discriminate against QFs by using lower cost transmission to move its power than it uses for non-owned resources. The Coalition contends that PacifiCorp's contractual arrangements with non-QF contracts in Oregon and beyond are relevant in order to discern the full range of transmission options used to wheel the company's generation and purchased power to load and its costs, and how avoided cost rates can be adjusted to reflect the wheeling arrangements.

PacifiCorp responds that non-QF resources are not relevant to the issue in this docket because non-QF PPAs are not subject to PURPA and related federal requirements. PacifiCorp contends that PURPA's mandatory purchase obligation makes QFs different than other designated utility network resources. PacifiCorp asserts that since it must secure long-term firm transmission for QFs, it does not discriminate against a QF by using different transmission options for non-QF resources. With regard to DR 11.8, PacifiCorp indicates that the Coalition is requesting copies of confidential materials (as discussed in the Commission's July 26, 2016 public meeting), and expresses concern that the Coalition represents entities that could be competitors for future renewable RFPs.

PURPA is a national statute, the Coalition replies, and all types of transmission used by PacifiCorp are relevant. The Coalition replies with regard to DR 11.8 that a standard protective order is in place in this proceeding that protects PacifiCorp's information. The Coalition comments that PacifiCorp should request a modified protective order instead of withholding the information.

I grant the Coalition's motion with regard to DR 11.7, 11.8, DR 11.9, 11.12, and DR 12.2 for the same reason stated in the above section, since the Commission has not yet legally

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<sup>6</sup> *Id.*

determined that PacifiCorp must secure long-term firm transmission to move QF energy out of a load pocket. PacifiCorp may, however, request a modified protective order before responding to DR 11.8.

**C. Data Requests Seeking General Information about Oregon Load and Generation Resources**

The Coalition requests that PacifiCorp provide basic information regarding the load and generation situation for Oregon QFs, and asks PacifiCorp to identify “the minimum and maximum retail electric load in the non-contiguous portion of PacifiCorp’s service territory that the QF serves on an electrical basis” (12.3) and “the amount of third-party transmission to wheel additional generation to load and that PacifiCorp would need to purchase if the QF ceased operations” (12.4). The Coalition indicates that this information may suggest benefits provided by QFs that should be priced. The information would also provide valuable planning information to QFs, the Coalition notes.

PacifiCorp states that it does not have the requested information as much of it is considered non-public transmission information under the FERC standard of conduct that is available only to the transmission provider and may not be shared with any party, even PacifiCorp’s merchant function, unless the OATT studies are performed and made publicly available on the OASIS website. PacifiCorp calls the information administratively burdensome to provide. PacifiCorp explains that it was able to provide certain information to certain QFs identified by PacifiCorp Transmission in its Designated Network Resource studies because the information was provided to PacifiCorp Merchant as the transmission services customer to move generation in excess of a minimum retail load out of a load pocket.

The Coalition replies that “PacifiCorp should provide all information within its possession, regardless of whether it is confidential or in the hands of its transmission function.”<sup>7</sup> The Coalition points to PacifiCorp’s provision of the requested information to certain QFs, and states that as it seems PacifiCorp will need the information to attribute any charges to Oregon QFs, PacifiCorp should provide the information or claim a privilege.

I deny the Coalition’s motion with regard to DR 12.3, DR 12.4. The Commission does not have the authority to direct PacifiCorp Transmission to provide the requested information.

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<sup>7</sup> Reply to Response to Motion to Compel at 9.

#### IV. CONCLUSION

PacifiCorp is directed to fully respond to the Coalition's data requests 11.1, 11.2, 11.3, 11.7, 11.8, 11.9, 11.12, and 12.2. With regard to data request 11.8, PacifiCorp may first submit a request for a modified protective order

Dated this 27th day of October, 2016, at Salem, Oregon.



Traci Kirkpatrick  
Administrative Law Judge