BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER THE PUBLIC UTILITY COMMISSION OF OREGON Investigation Into Qualifying Facility Contracting and Pricing	)	Docket No. UM 1610 OBJECTION TO PACIFICORP'S COMPLIANCE FILING OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION AND THE RENEWABLE ENERGY COALITION

I. INTRODUCTION AND SUMMARY

The Community Renewable Energy Association ("CREA") and the Renewable Energy Coalition ("REC") (collectively the "Joint QF Parties") respectfully submit this Objection to PacifiCorp's compliance filing made in response to the Public Utility Commission of Oregon's ("OPUC" or "Commission") Order No. 19-172. As explained herein, PacifiCorp's compliance filing is deeply flawed and must be corrected before it goes into effect.

The Joint QF Parties continue to believe that the Commission's new load pocket policy, as adopted in Order No. 19-172, violates the mandatory purchase provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the Federal Energy Regulatory Commission's ("FERC") implementing regulations, as well as associated state law. The most notable violation is the Commission's failure to offer each qualifying facilities ("QFs") a long-term fixed-price rate for the full 15-year fixed-price period in Oregon contracts by instead only offering a five-year period of fixed prices to load pocket QFs. The implication of the Commission's finding that five years of fixed prices is sufficient in Order No. 19-172 is that PURPA and associated state law only require contract terms of five years – a proposition with which the Joint QF Parties strongly disagree. Additionally, as PacifiCorp's compliance filing now demonstrates, every

single Oregon QF attempting to sell to PacifiCorp will now have to execute a power purchase agreement ("PPA") that lacks certainty as to the avoided cost compensation at the time of contract execution. Instead, the new load pocket policy created by Order No. 19-172 will result in every PacifiCorp PPA containing an addendum that allows PacifiCorp to conduct additional transmission studies to determine – after execution of the PPA – if PacifiCorp will attempt to calculate and assess rate-reducing costs to the QF. Aside from being unlawful, this new policy will unquestionably deter otherwise viable development of small-scale renewable energy resources in Oregon.

However, this Objection addresses only PacifiCorp's failure to fully comply with the requirements of Order No. 19-172, and the Joint QF Parties reserve the right to challenge the lawfulness of the Commission's new policy itself at some future time. As explained herein, PacifiCorp has not correctly implemented the requirements of Order No. 19-172 and has instead granted itself even further rights to deter QF development. These flaws in PacifiCorp's compliance filing make a difficult proposition even worse for QFs. In Order No. 19-172, the Commission directed PacifiCorp to file a revised rate schedule implementing the policies in the order, but did not state the schedule would become effective without further order by the Commission. However, the order stated that PacifiCorp's proposed contract forms would take effect 30 days after its filing unless suspended by the Commission. Therefore, the Commission should suspend the filing and require PacifiCorp to offer its previously effective standard contract and schedule until the issues identified herein are corrected by PacifiCorp.

Finally, if PacifiCorp disagrees with the Commission's direction in Order No. 19-172, or wishes to propose additional restrictions on QFs in load pockets, then it should raise those issues

in UM 2000. PacifiCorp could have raised each of these new issues in UM 1610, and it is inappropriate to require Staff and the Joint QF Parties to expend limited time and resources addressing major and significant departures from the Commission's direction in what is supposed to be a simple filing to comply with a Commission order.

II. OBJECTION

A. In Reviewing PacifiCorp's Compliance Filing, the Commission Should Ensure the Cure to the Load Pocket Problem Does Not Ensnare Non-Load Pocket QFs

At the outset, it is important to summarize the status of this issue and the Commission's expressed intent in largely adopting PacifiCorp's proposed policy for addressing PacifiCorp's alleged load pocket problem.

First, in adopting PacifiCorp's proposed load pocket policy, the Commission relied on PacifiCorp's assertion that the load pocket issue would arise infrequently. Specifically, PacifiCorp agreed with Staff that "incremental third-party transmission expense will be allocated to QFs *only when* a QF locates in a load pocket in which the QF's output exceeds local load and must be transmitted out of the load pocket by third-party transmission to other load. PacifiCorp reiterates that it expects *these circumstances will be highly unusual*." Order No. 19-172 at 5 (emphasis added); *see also id.* at 10 (stating "the issue currently applies, *if at all*, to PacifiCorp only and *only in limited circumstances* on PacifiCorp's system" (emphasis added)); Order No. 18-181 at 5 (stating that PacifiCorp asserted applicability of its cost-allocation option "has, in

practice, been extremely limited . . .").[1] The purpose of developing a cost-allocation method was expressed as follows: "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." Order No. 18-181 at 5.

Thus, any compliance filing implementing such policy should be designed to minimally impact the vast majority of QFs that PacifiCorp asserted it will not impact with its load pocket policy. The new standard contract and rate schedule should *not* – as the Joint QF Parties have feared they would from the start – work to frustrate development of QFs that are not located in load pockets.

Second, it is critical to understand what issues the Commission did *not* resolve and therefore must be left to individual adjudication by individual QFs harmed by PacifiCorp's future actions related to alleged load pocket issues. The Commission's orders have merely established a process for allocating third-party transmission costs in the rare circumstance where there may be justification to allocate such costs to a QF. It did not answer the question whether any individual QF is subject to the policy. Nor could it do so. Instead, individual QFs retain the right to challenge PacifiCorp's determination that a particular QF is located in a load pocket necessitating acquisition of third-party transmission, and nothing in a finally approved standard contract or rate schedule may lawfully preclude QFs from doing so.

[1] In accepting that representation by PacifiCorp, the Commission ignored PacifiCorp's prior statements in the very same proceeding that its *entire* Oregon service territory consists of load pockets. *See* UM 1610 Phase I CREA/504, Hearing Exhibit/1-3 (containing PacifiCorp statement that "[a]ll qualifying facilities (QFs) are located in load pockets within PacifiCorp's service territory."). PacifiCorp should nevertheless be held to its more recent representations upon with the Commission relied in adopting PacifiCorp's policy.

With those points in mind, the remainder of this Objection discusses issues that PacifiCorp should be directed to revise in the compliance filing.

B. PacifiCorp's Proposed Fixed-Price Formula Is Flawed

The Commission required that PacifiCorp offer each load pocket QF the option to pay for third-party transmission on a forecasted basis in five-year increments. *See* Order No. 19-172 at 11 ("a QF may elect to have PacifiCorp procure long-term, firm, point-to-point transmission from a third-party transmission provider in five year increments, with determination of the costs developed on a forecast basis that would be documented in an addendum to be executed concurrently with the QF's PPA."). The order noted that no party had proposed a specific forecasting methodology and therefore directed PacifiCorp to propose a methodology in its "initial compliance filing." *Id.* However, the Commission agreed with the Joint QF Parties that the "that the methodology for calculating a five-year, forecasted, fixed-price reduction for incremental third-party transmission costs should be published and made available with PacifiCorp's avoided cost rate schedule." *Id.* at 12. PacifiCorp's initial compliance filing's proposal for providing forecasted rates should be modified in several respects.

1. The Commission Should Require Pre-Calculated Rates in the Rate Schedule

First, the Commission should modify PacifiCorp's proposal to individually calculate the transmission rates and the escalation factor on a case-by-case basis and should require PacifiCorp to publish the standard capacity charge ($/kW-month) and ancillary service charges for the main transmission providers in its rate schedule for approval each time PacifiCorp's avoided costs are approved. The new rate reduction is fundamentally a reduction to the avoided cost rates and it must be offered to QFs on a standardized and pre-calculated basis, just as is

required for the other rate components. *See* 18 CFR § 292.303(c). This would allow the Commission Staff to review the rate calculation and avoid the risk of errors and disputes, as well as delays, in an individual rate calculation process. These readily available and indisputable rates would then be easily input from the rate schedule into the addendum for an individual load pocket QF after determining the amount of third-party transmission needed and the applicable transmission provider.

Such a requirement would be easily implemented. There is a limited number of potential third-party transmission providers for which a pre-calculated rate would need to be calculated with each rate filing, including Bonneville Power Administration ("BPA"), Portland General Electric Company ("PGE"), and Idaho Power Company.

Aside from the need for a pre-calculated amount in the rate schedule, there are numerous problems with the calculation formula that PacifiCorp proposed, which are discussed below.

2. PacifiCorp's Formula Provides Fixed Prices for Less than Five Years

As noted above, the Commission determined to only provide five years of fixed price reductions, despite the assertions by the Joint QF Parties and the Commission's Staff that the fixed-price reduction must be forecasted for the entire 15-year period of the 15-year fixed-price period in Oregon's standard contracts. In doing so, the Joint QF Parties believe that the Commission's new policy is in violation of federal and state law.

However, PacifiCorp has gone beyond the scope of the Commission's order, and effectively proposed that a QF's initial fixed price period will be as little as one or two years. PacifiCorp accomplishes this by starting the date for the fixed price period to five years after the *effective date of the PPA* rather than the date power deliveries commence. Specifically,

PacifiCorp's formula accomplishes that result by only calculating the forecasted, fixed-price reduction for five years after the effective date of the PPA.[2] That intent is further confirmed by PacifiCorp's proposed contract addendum, which states: "The Monthly Transmission Rate will be adjusted on each five (5) year anniversary of the Effective Date (each, an 'Adjustment Date') . . ." *PacifiCorp Proposed Addendum* at p. 2. In effect, PacifiCorp's proposal provides less than five years of fixed prices because the period of fixed price payments is reduced for each day of the development period between contract execution and commercial operation, which is typically up to three years. From a practical perspective, PacifiCorp proposes to provide two years of fixed prices in the typical case for a new project, and only QFs that achieve commercial operation on the day they execute the PPA would receive five years of fixed prices – which is entirely impossible under the new addendum because PacifiCorp only conducts studies regarding the load pocket *after* execution of the PPA.

The Commission's fixed-price policy provides fixed prices that run for a period of years after the time of power deliveries, not the time of contract execution. *See* Order No. 18-079 (rejecting PGE's attempt to curtail the fixed-price period 15 years after the effective date of the

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[2] PacifiCorp proposes that:

> n = the current year of any five (5) year term for the Monthly Transmission Rate *in this Agreement*. For example, *for a QF PPA effective in* 2019, **n** shall equal the following: 2019 = 0, 2020 =1, 2021=2, 2022=3 and 2023=4.

(emphasis supplied).

And the formula provides:

> Monthly Transmission Rate = $[((PTP^y + SCD^y) \times D) + (AC^y \times V) + (L^y \times V \times CP)) \times (1+ e)^n]$

PPA). That policy makes good sense because "'[p]rices paid to a QF are only meaningful when a QF is operational and delivering power to a utility.'" *Id.* at 3 (quoting Order No. 17-256 at 4 (Jul 13, 2017). There is no basis for different treatment now that the period of fixed prices has been reduced to five years for load pocket QFs.

Moreover, in Order No. 19-172, the Commission required prices to be forecasted for a five-year period during which the QF is selling to PacifiCorp and during which PacifiCorp is actually paying the third-party transmission rates. The Commission reasoned that this "option takes advantage of the minimum five-year commitment required to obtain long-term, firm, point-to-point transmission", *id.*, – which is the minimum period of transmission service required to obtain rollover rights to continued long-term, firm, point-to-point transmission under the FERC's open access policies. *See* Order No. 890, 72 Fed Reg 12,266, FERC Stats. & Regs. ¶ 31,241, at P 1231 (March 15, 2007).[3] In turn, FERC's policy requires a transmission customer to commit to pay for transmission service for five years to obtain such rollover rights; any period after execution of the point-to-point transmission service agreement but prior to actually taking and paying for service does not count towards that minimum five year period.

Therefore, the Commission should require PacifiCorp to correctly tie the forecasted pricing period to the fixed price period in its standard contract and the five-year period of the transmission agreement.

[3] This is evidenced by the fact that FERC's pro forma point-to-point transmission agreement measures the "Term of Transaction" as the period from the "Start Date" to the "Termination Date." *See id.* at Appendix C (containing pro forma agreement at Original Tariff Sheet Nos. 143-146).

3. PacifiCorp's Formula Incorrectly Assigns a Charge for the QF's Entire Capacity Instead of the Transmission Capacity Purchased

Next, PacifiCorp's formula charges the QF for transmission costs at the QF's full capacity even if the QF does not require third-party transmission for its full capacity. The flaw in the formula on this point is the formula's use of the QF's capacity in the PPA as the figure against which the transmission rates are calculated to arrive at the avoided cost rate reduction.[4] There will be circumstances where PacifiCorp will determine it only needs to secure third-party transmission for a portion of the QF's total capacity. For example, if load in the area can absorb 3 MW of QF generation, PacifiCorp would only obtain 7 MW of third-party transmission for a 10 MW QF. In that example, such QF should only be charged for 7 MW of third-party transmission capacity and the actual amount of generation scheduled on the third-party transmission provider's system for purposes of calculating the ancillary service component.

The Commission should require PacifiCorp to correct this error in its formula.

4. PacifiCorp's Formula Unlawfully Charges the QF for Losses on PacifiCorp's Side of the Point of Interconnection

PacifiCorp's proposed formula also unlawfully charges the QF for losses on PacifiCorp's side of the QF's delivery to PacifiCorp's system. PacifiCorp generally incurs losses on its side of the delivery point for power delivered by all QFs; the only difference with a load pocket QF is

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[4] This occurs due to the following definitions used in the formula:

> D (MW) = the maximum delivery quantity, in MW, applicable under the Agreement [i.e., the PPA, not the third-party transmission agreement]

And:

> V (MWh) = the actual monthly generation delivery quantity from Seller to PacifiCorp, in MWh, applicable under the Agreement [i.e., the PPA, not the third-party transmission agreement].

that the losses will occur on the third-party transmission provider's system as opposed to the losses that would occur to transport the same power over a similar distance on PacifiCorp's system to PacifiCorp's load. Losses also exist in moving the output of PacifiCorp's avoided resources (some of which are remotely located) to PacifiCorp's load and are therefore implicit in the avoided cost rate calculations. PacifiCorp provided no evidentiary basis to support a finding that the losses incurred with moving QF output to load are greater than the losses incurred in moving PacifiCorp's avoided resources across PacifiCorp's system and any third-party systems. Thus, losses should be eliminated the from formula altogether.

Alternatively, even if it were appropriate to reduce a payment to a QF for losses occurring beyond the delivery point to PacifiCorp (which is unlawful), PacifiCorp's formula does not implement such a calculation in a reasonable or fair manner. The proposed formula calculates the avoided cost rate reduction through the following equation within the formula: L^y x V x CP. This proposal uses the third-party transmission provider's loss figure on its system (L) and multiplies it by the QF output delivered to PacifiCorp (V) and the PPA's contract price (CP). But there is no basis to multiple the losses by the QF's PPA contract price. By doing so, PacifiCorp effectively reduces the amount of QF output it must pay for by the percentage of losses used by the third-party transmission provider, e.g., by 2.0 percent in the sample calculation in PacifiCorp's Appendix A. If any rate reduction can occur here for losses, it would be the payment for losses that PacifiCorp pays to the third-party transmission provider, not a reduction in the payments at the PPA contract price. To make matters even worse, PacifiCorp *escalates* the losses over the five-year period (through the placement of its escalation factor in the formula). There is no basis whatsoever to escalate the amount for losses charged.

In sum, the Commission should require removal of PacifiCorp's proposed losses charges.

5. PacifiCorp's Formula Should Use An Escalation Factor that Is Transparent and Consistent with Escalation Used for Other Regulatory Purposes

The Commission should also ensure that PacifiCorp's escalation factor for third-party transmission expense is transparent and consistent with similar escalation factors used for other regulatory purposes. PacifiCorp proposes to individually calculate an escalation factor for each QF after the PPA is executed based upon the transmission provider's rate changes over the past 10 years. However, this is not necessarily how Oregon utilities calculate assumed escalation of transmission rates for other purposes. The utilities each model BPA transmission rates in the integrated resource plans ("IRPs"). Additionally, PGE has used a transmission rate escalator for BPA transmission in its avoided cost rates for many years because PGE's avoided resource is typically an off-system resource that is assumed to use BPA point-to-point transmission to deliver its output to PGE's system. PacifiCorp provided no explanation as to what the BPA escalation rate would be under its proposal, so it is not possible to even vet PacifiCorp's proposal against other methods used in the utilities' IRPs and PGE's avoided cost rates. On this point, PacifiCorp's compliance filing is incomplete and cannot be approved without further investigation.

Additionally, the Joint QF Parties reiterate that any method that allows PacifiCorp to unilaterally calculate any component of the rate in an individual QF negotiation defeats the purpose of standard rates and the transparency and reduced transaction costs associated with standard rates. It would not be difficult for PacifiCorp to provide the escalation factor, along with the entire rate forecast, for the major transmission providers in its rate schedule every time

that it updates its avoided cost rates – just as PGE has done for at least a decade with respect to BPA transmission rates included in its avoided cost rates.

The Commission should reject PacifiCorp's escalation proposal for lack of transparency and lack of support. The Commission should require further explanation of the transmission escalation proposal, including how it compares to similar escalations used by PacifiCorp in its IRP and in PGE's avoided cost rates. Additionally, the rate should be calculated and set forth in the rate schedule for approval by the Commission.

C. PacifiCorp's Proposed Addendum Ignores the Possibility that PacifiCorp Should Use BPA Network Transmission for Certain QFs

The Commission should require that PacifiCorp's proposed contract addendum be modified to clarify that PacifiCorp may only assign third-party point-to-point transmission costs to a QF after PacifiCorp's merchant arm, referred to as Energy Supply Management ("PacifiCorp ESM") has received notification that the QF cannot be designated as a network resource under either of PacifiCorp ESM's network service agreements, including its network service agreement with BPA. Specifically, the Commission should require the following edit to the proposed addendum:

1. PacifiCorp shall request to designate the Facility as a network resource under its Network Integration Transmission Service Agreement with PacifiCorp's transmission function within seven days of execution of the Agreement. If PacifiCorp's transmission function cannot designate the Facility as a network resource without use of third-party point-to-point transmission or completion of network upgrades, PacifiCorp shall request to designate the Facility as a network resource under its Network Integration Transmission Service Agreement with Bonneville Power Administration's transmission function within seven days of such notification by PacifiCorp's transmission function. If, in response to PacifiCorp's request to designate the Facility as a network resource eligible for network integration transmission service under its Network Integration Transmission Service Agreements with PacifiCorp's transmission function, PacifiCorp is informed by PacifiCorp's transmission

> function that such network resource designation is contingent on PacifiCorp procuring transmission service from a third-party transmission provider, and Bonneville Power Administration's transmission function notifies PacifiCorp of its inability to designate the Facility as a network resource, PacifiCorp shall notify Seller in writing and provide Seller the transmission studies~~y~~, communications, and ~~or~~ other documentation from PacifiCorp's transmission function and Bonneville Power Administration's transmission function that demonstrates that PacifiCorp timely requested such designations and that the requirement for third-party point-to-point transmission exists for the Facility.

PacifiCorp's Proposed Addendum at p. 1 (proposed edits in underline and strikethrough).

These edits are necessary because, as drafted by PacifiCorp, the proposed addendum may be used to eliminate the use of BPA network transmission for all Oregon QFs. PacifiCorp uses a Network Integration Transmission Services Agreement with 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.[5] PacifiCorp has provided a list of several Oregon QFs that are already designated as network resources under its BPA network agreement. The

[5] 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).

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 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 this current practice of using BPA network transmission for QF power should not be casually eliminated through a poorly drafted compliance filing addendum.

To date, the Commission has provided no findings or conclusions in this proceeding that provide any basis to bar QFs from the enjoying the benefits of use of BPA network transmission to resolve an alleged load pocket problem that PacifiCorp's transmission function perceives. Nor does any order issued by the Commission express any intent to do so. And PacifiCorp has not provided any basis to ignore the use of BPA network transmission, which it admittedly already uses for certain QFs that would otherwise be located in load pockets. Accordingly, the Commission should not approve a contract addendum that could serve to bar QFs from use of that solution after execution of their PPA with PacifiCorp, and the Commission should require the modifications set forth above.

D. PacifiCorp's Compliance Filing Does Not Provide QFs Sufficient Information and Studies to Support PacifiCorp's Determinations

The Commission should require PacifiCorp to provide to individual QFs all information and communications with transmission personnel to support any finding by PacifiCorp that the QF is located in a load pocket and subject to load pocket charges. PacifiCorp proposes to only provide the QF with "the transmission study or other documentation from PacifiCorp's transmission function that demonstrates the requirement" for third-party transmission. *PacifiCorp's Proposed Addendum* at p. 1. Additionally, PacifiCorp included no requirement to supply any supporting information or studies with respect to any subsequent five-year period after the first five-year period under the PPA. That is not enough information.

The Commission already agreed with the Joint QF Parties on this point in Order No. 19-172, which states that the QF should be provided with: "*an explanation concerning the applicability* of the third-party transmission charge, *its determination on a contract-by-contract basis*, and information about calculation of the amount *and* 2) a statement that PacifiCorp will provide a QF with *a copy of studies performed by PacifiCorp Transmission and any third-party transmission providers* to determine that incremental third-party transmission is required to integrate the QF's output at the time the determination is made." Order No. 19-172 at 12 (emphasis added).

Providing complete information to the QF is critically important because PacifiCorp is, in effect, acting as the QF's agent and go-between to the transmission providers, which could include both PacifiCorp Transmission and BPA Transmission, along with other third-party transmission providers. The protections of FERC's open access transmission rules are meaningless if the party paying for the transmission services and potentially subject to

discrimination (here, the QF) has no direct contact or contractual privity with the applicable FERC-regulated transmission provider (here, PacifiCorp Transmission and, most likely, BPA Transmission). Thus, the QF needs complete information regarding PacifiCorp ESM's communications and conduct with the applicable transmission providers in order to ensure PacifiCorp has acted in good faith with respect to investigation of the load pocket problem.

The Commission should require that the QF be provided all correspondence between PacifiCorp ESM and all transmission providers in any way involved in the load pocket transmission issue, as well as all studies supplied by such transmission providers. This information should be supplied every time PacifiCorp determines that load pocket transmission costs will apply to the QF, including during investigations for subsequent five-year periods during the term of a PPA longer than five years. Finally, the Commission's order should make it clear that the QF can seek legal redress from either the Commission or another relevant administrative or judicial body if PacifiCorp fails to fulfill any of its obligations to reasonably obtain and manage the load pocket situation.

E. The Commission Should Revise the Language Regarding Deadlines for PacifiCorp to Conduct the Load Pocket Studies and for the QF to Select an Option

PacifiCorp's compliance filing also contains inadequate deadlines to ensure proper implementation of the new load pocket policy. Indeed, the proposed contract addendum appears to contain no deadlines at all that would apply to PacifiCorp.

First, the Commission should require a seven-day deadline after execution of the PPA by which PacifiCorp must submit the request to designate the QF as a network resource. The investigation cannot even start until PacifiCorp ESM makes the request to designate the QF as a network resource, and the QF has no control whatsoever over when PacifiCorp does so, unless

there is an express requirement for timely submittal of the request in the PPA. Submitting the request is a simple process of completing and submitting a short form regarding the QF, and it could easily be completed in less than seven days.

Second, PacifiCorp proposes that the QF's deadline to select the option it chooses will be 30 days after it receives "notification" from PacifiCorp that the load pocket problem exists and load pocket charges will apply. *PacifiCorp's Proposed Addendum* at p. 1. However, the QF's deadline should run from the date when PacifiCorp supplies the notification *and all supporting documentation and explanations*, including applicable transmission studies, communications between PacifiCorp and the transmission providers, etc. Prior to receiving such material, the QF cannot confirm that PacifiCorp even requested the correct issues be studied, and it certainly cannot make an informed decision as to whether it should agree to the forecasted or the time-of-delivery pricing options.

Relatedly, PacifiCorp unreasonably provides no ability for the QF to dispute PacifiCorp's determination that third-party transmission is needed without the risk of having its PPA terminated. Instead, PacifiCorp requires the QF to select pricing option 1, pricing option 2, or terminate the PPA. Failure to make a selection within 30 days will also result in termination of the PPA under PacifiCorp's proposal. The problem with this proposal is that the QF has no ability to initiate dispute resolution before the Commission or in court without having PacifiCorp threaten to terminate the PPA for failure to select one of the two pricing options. The available selections should include the option of the QF initiating a complaint before an appropriate tribunal.

F. The Commission Should Require PacifiCorp to Provide Each QF the Ability to Switch Its Selection of an Option after Each Five-Year Period

PacifiCorp's proposed rate schedule and addendum unreasonably preclude the QF from switching the pricing option it will use after each five-year period. *See PacifiCorp's Proposed Addendum* at pp. 1-2. There is no basis to deprive the QF of the option to switch pricing options at the end of each five-year increment, and the Commission should require revision to PacifiCorp's rate scheduled and contract addendum to accommodate that option.

G. The Commission Should Require PacifiCorp to Complete a Preliminary Analysis of the QF's Load Pocket Status Prior to PPA Execution

PacifiCorp's proposed rate schedule and contract addendum would provide the QF with no information regarding the likelihood of load pocket charges to the QF prior to execution of the PPA. Instead, the QF would become aware of whether such charges would be assessed only after it executes the PPA and PacifiCorp reports back with the results of the transmission studies it undertakes, which could easily take months. This scenario will create a cloud of uncertainty for *all Oregon QFs selling to PacifiCorp*, not just those very limited and rare QFs that will be subject to the load pocket charge. During this period of delayed certainty, the QF will not be able to rely upon the PPA for purposes of securing financing or organizing its development efforts.

The Commission should require that PacifiCorp provide all QFs with a preliminary determination during contract negotiations of whether they may be subjected to load pocket charges after transmission studies are completed during the months after PPA execution. PacifiCorp has been providing this type of information to QFs already, and there is no reason it cannot continue to supply such information to QFs. Providing this information soon after the QF

requests a contract currently allows the QF to make informed business decisions about whether to expend the time and resources negotiating and attempting to enter into a PPA. The costs of third party transmission, or the fact that there is only five years of fixed prices could make the project uneconomic or not financeable, and the QF should not have to wait until after contract execution to get this information. In addition, as nearly all existing QFs are not located in load pockets and there is no need for third party transmission, it should be extremely easy for PacifiCorp to quickly provide this information to operating projects.

The preliminary determination should be reasonable and not designed to deter QFs from executing standard contracts, and the Commission should require that such determinations be included in quarterly status reports to the Commission and parties to UM 1610, as discussed further below.

H. The Commission Should Remove the Ability for PacifiCorp to Determine It Will Not Purchase a QF's Output

PacifiCorp's proposed contract addendum contains an unlawful right for PacifiCorp to refuse to purchase the QF's output if PacifiCorp determines there is no third-party transmission solution to the alleged load pocket problem.

Specifically, PacifiCorp proposes a process for when transmission is not available from the third-party transmission provider for the term requested by PacifiCorp, which was never discussed in UM 1610 or the Commission's orders and appears to be a new problem PacifiCorp failed to alert the Commission to at the time it adopted this new policy. First, PacifiCorp proposes the QF must agree that it will move its Scheduled Commercial Operation Date to a later date if the third-party transmission provider determines transmission is not available earlier and agree to pay for any transmission upgrades needed to the third-party transmission provider's

system. But PacifiCorp further proposes that even that option is not available "if the estimated date for availability of LTF PTP transmission service results in an anticipated Scheduled Commercial Operation Date that is more than thirty six (36) months following the Effective Date." *PacifiCorp's Proposed Addendum* at p. 4. In such a situation, it would appear that PacifiCorp can completely defeat the mandatory purchase provision of PURPA and decline to purchase the QF's power at all on the sole ground that the alleged load pocket problem will preclude the QF from achieving commercial operation within three years of executing its PPA.

The Commission should reject this proposal. The Commission's policy is that QFs may elect a commercial operation date that is three years after the effective date of the PPA, or such longer period "if the QF can establish that a period in excess of three years is reasonable and necessary and the utility agrees to the scheduled COD." Order No. 15-130 at 2. By definition, a QF demonstrates a longer development period than three years is needed in the scenario where PacifiCorp alleges it cannot accept the QF's power until more than three years after execution of the PPA.

The Joint QF Parties note that PacifiCorp made a similar proposal to Wyoming that prevented a QF from entering into a contract more than thirty (30) months following the Effective Date, even when PacifiCorp could not interconnect or otherwise obtain transmission for the QF in 30 months. In Wyoming, PacifiCorp explicitly requested the change in policy instead of sneaking it into an unrelated compliance filing. REC challenged PacifiCorp's proposal, and the relevant and excerpted portions of REC's testimony are attached to this Objection. REC pointed out that PacifiCorp's Wyoming proposal, as is the case PacifiCorp's proposed addendum here, would completely release PacifiCorp from its the mandatory purchase

obligation on the sole grounds PacifiCorp was unable to resolve the interconnection or transmission issue on a timely basis. Rather than address the merits of its proposal, PacifiCorp withdrew the proposal from the proceeding. If PacifiCorp does not voluntarily withdraw its new restriction, then this Commission should reject it as being outside the scope of a compliance filing and an unlawful restriction on PacifiCorp's PURPA obligations. In the alternative, the Commission should expressly require PacifiCorp to amend the Scheduled Initial Delivery Date and the Scheduled Commercial Operation Date in the PPA if PacifiCorp cannot obtain third party transmission within 36 months.

I. The Commission Should Require PacifiCorp to File Quarterly Status Reports Regarding Load Pocket QFs and Implementation of the Load Pocket Policy

PacifiCorp's proposed load pocket provisions have the potential to curtail all QF development in PacifiCorp's service territory because these new contract provisions will apply to *all Oregon QFs selling to PacifiCorp*, even though the policy was adopted with the intent of impacting very few QFs. Thus, the Commission should actively monitor how PacifiCorp implements the policy and require monthly status updates from PacifiCorp, including the following data:

- Identification of each QF seeking a PPA with PacifiCorp;
- PacifiCorp's preliminary determination communicated to the QF of whether the QF is located in a load pocket prior to PPA execution;
- Whether the QF requested a final executable PPA after being informed of the preliminary determination;
- If the QF executed the PPA:

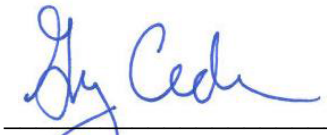
- Number of days after execution that PacifiCorp requested designation as a network resource to PacifiCorp's transmission function and, if applicable, BPA's transmission function;
- Number of days after the request that the transmission provider supplied PacifiCorp ESM with the determination;
- Number of days after receiving determination until PacifiCorp ESM supplied the QF with the determination and supporting studies, communications, and documentation;
- Option that QF elected (Pricing Option One, Option Two, Dispute Resolution, or Termination); and
- Whether the QF successfully achieved commercial operation.

III. CONCLUSION

The Joint QF Parties respectfully request that the Commission condition approval of PacifiCorp's standard contract and contracting schedule on correction of the issues identified in this Objection.

Dated: July 26, 2019.

Respectfully submitted,



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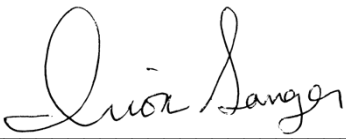

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ATTACHMENT 1

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.

ATTACHMENT 2

Excerpt of John Lowe's Testimony on Behalf of the Renewable Energy Coalition in Wyoming Public Service Commission Docket No. 2000-545-ET-18

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is John R. Lowe. I am the director of the Renewable Energy Coalition ("REC" or the "Coalition"). My business address is 88644 Hwy. 101, Gearhart, OR 97138

Q. Please state your background and experience?

A. In 1975, I graduated from Oregon State University with a B.S. I was employed by PacifiCorp for thirty-one years, most of which was spent implementing the Public Utility Regulatory Policies Act ("PURPA") regulations throughout the utility's multi-state service territory. My responsibilities included all contractual matters and supervision of others related to both power purchases and interconnections. Since 2009, I have been directing and managing the activities of the Coalition as well as providing consulting services or services coordination to individual members related to power purchases, interconnections, and other interfaces with a purchasing utility such as electrical operation problems, metering, communications and billings.

Q. On behalf of whom are you appearing?

A. I am testifying on behalf of REC.

Q. Please describe REC and its members?

A. REC is an unincorporated trade association that is comprised of 35 members who own and operate over fifty qualifying facilities ("QFs") or are attempting to develop new QFs under PURPA in Oregon, Idaho, Washington, Utah, Montana and Wyoming. REC's members include irrigation districts, water and waste management districts, corporations, small utilities, and individuals with an interest in selling renewable energy to utilities –

should reject Rocky Mountain Power's request to apply the Schedule 38 process to Schedule 37 QFs and should approve less onerous and more expedited processes for entering into Schedule 37 contracts.

Eighth, the Commission should continue to use Rocky Mountain Power's Grid/Proxy methodology for setting small Schedule 37 QF prices, rather than the Proxy/PDDRR methodology used for Schedule 38 QF prices. Rocky Mountain Power's avoided cost prices for Schedule 37 are already too low, and fail to fully compensate QFs for their full capacity and energy value. Rocky Mountain Power's proposal will further exacerbate this inequity and result in challenges to and less transparency in the determination of contracted prices.

Ninth, Rocky Mountain Power's proposal that a QF needs to select a commercial operation date ("COD") 30 months from contract execution should be rejected in favor allowing the QF the greater of four years (48 months) or the earliest in-service-date Rocky Mountain Power identifies in its own interconnection study. Rocky Mountain Power is informing QFs that it might take 5-6 years (60-72 months) to interconnect them. This means that 30 months is far too short a period of time to reach COD when the same company (Rocky Mountain Power) refuses to, or is unable to, process the QF's interconnection request within that timeframe. A QF should not be placed in a "Catch 22" situation in which it is required to pick a COD which less time than Rocky Mountain Power can interconnect the facility. This is just one example of how Rocky Mountain Power has weaponized the transmission and interconnection process to avoid its PURPA mandatory purchase obligation.

IX. GENERATOR INTERCONNECTIONS AND COMMERCIAL OPERATION DATES

Q. Has Rocky Mountain Power proposed limitations on when QF commercial operation date ("COD") can be selected?

A. Yes, Rocky Mountain Power has added a significant limitation with specific tariff provisions stating that QF COD (or the start of the delivery term of subsequent PPAs for existing QFs) must not exceed 30 months from the PPA execution date and that QFs must provide project development security within 30 days of its PPA being filed with the Commission.

Q. What do you recommend?

A. A QF should be able to select a COD that is the greater of: 1) four years from contract execution; or 2) the amount of time that PacifiCorp says it will take to complete any interconnections to match the COD.

Q. Is the Rocky Mountain Power transmission/interconnection process relevant to the selection of the appropriate COD?

A. Yes, Rocky Mountain Power has weaponized the transmission and interconnection process almost to perfection in its efforts to shut down and refuse to purchase power from QFs. This has been accomplished by creating conflict between the maximum time to allow for COD and the minimum time RMP may require for interconnection.

Q. Please provide some background on the interconnection and transmission study process.

A. For those not familiar with the Federal Energy Regulatory Commission jurisdictional interconnection process, the first step can be either a Feasibility or System Impact Study.

The developer and the interconnected utility enter into an agreement to conduct the study, which is called a "System Impact Study Agreement." This study has timelines for payment by the developer and completion of the study by the utility. After the developer and the utility enter into this agreement, the utility conducts the study and reviews the adequacy of its transmission or distribution system to accommodate the new generation and identifies what additional costs may be incurred to provide service. At the completion of the System Impact Study, the developer and the utility must enter into a new contract to conduct a new study, which is the "Facilities Study Agreement." The Facilities Study Agreement also includes timelines for payment and the completion of the study. The Facilities Study itself is more granular and is a real engineering study designed to determine the required modifications to the system, including the cost and scheduled completion date necessary to provide service. After these timelines and costs are identified in the Facilities Study, then the utility and developer negotiate an actual Interconnection Agreement to construct and pay for the interconnection to the utility's system.

Q. Are there often delays in this process?

A. Yes. The process, even when moving perfectly, can be cumbersome and time consuming, and it is not uncommon for there to be significant delays completely outside the control of the developer. I understand that interconnection customers on RMP's system are experiencing unprecedented delays, and that their interconnection requests have not advanced through the normal interconnection study process in a manner consistent with the Company's Open Access Transmission Tariff ("OATT") timelines.

Interconnection customers are simply not receiving the required explanation of the reasons why additional time is required, an estimated completion date, or even when their studies will begin to move forward. Some of these delays may exceed one year past the requirements in the OATT.

Based on publicly available information, it appears that in 2017, 153 projects submitted interconnection requests. Of those projects, 80 were withdrawn or granted an interconnection agreement. Only 7 have been issued Facilities Studies, 15 have been issued a System Impact Study, and one a Feasibility Study. While there may be some delays associated with the interconnection customer, there appears to be 50 projects from 2017 that apparently have not had any tangible action from the utility. Similarly, since the beginning of 2018, 115 projects have submitted interconnection requests. Of those projects, 17 were withdrawn or granted an interconnection agreement, one has been issued a Facilities Study, four have been issued System Impact Studies, and three Feasibility Studies. In 2018, the two projects that submitted interconnection requests and received interconnection agreements are both very small generators that are being processed via an expedited process and are not representative of the delays experienced by the majority of generators that are being processed under the FERC SGIP and LGIP. It appears that many of the executed interconnection agreements in 2017 may also have been small generators processed using more expedited procedures. There have been 89 projects submitted after January 1, 2018 that received no tangible action. We may be in a period of unprecedented interconnection delays, which could significantly limit the

ability of QFs to sell power to Rocky Mountain Power or meet CODs established in power purchase contracts.

Q. Can you provide additional details regarding what a QF must provide to obtain a Large Generator Interconnection Agreement ("LGIA") from Rocky Mountain Power?

A. Yes. The LGIA is the last step in the interconnection process, and it provides the timeline and costs for the QF to be fully interconnected and sell power to the utility. Section 46.3 of PacifiCorp's OATT requires a QF to produce one of the following before it is able to execute an LGIA: 1) the execution of a contract for the supply or transportation of fuel to the Large Generating Facility; 2) the execution of a contract for the supply of cooling water to the Large Generating Facility; 3) execution of a contract for the engineering for, procurement of major equipment for, or construction of, ("EPC Contract") the Large Generating Facility; 4) execution of a contract for the sale of electric energy or capacity from the Large Generating Facility; or 5) application for an air, water, or land use permit.

A wind or solar QF can only produce the last three documents in order to satisfy the OATT requirements. These cannot be provided so long in advance. An EPC Contract cannot be reasonably executed 3-6 years in advance of commercial operations, and permits cannot be applied for that far in advance because they will likely expire before you break ground. If Rocky Mountain Power refuses to negotiate and enter into a PPA in more than 30 months, then there is simply no way for the QF to even obtain a LGIA.

Q. How does this relate to PPA negotiation process?

A. Rocky Mountain Power won't execute a contract prior to the COD identified in a transmission study that it performs. A QF can do everything in its power to complete its project on a timely basis, but Rocky Mountain Power will not give the QF a contract because Rocky Mountain Power cannot guarantee that Rocky Mountain Power can interconnect the QF in 30 months.

Q. What do you recommend?

A. Because Rocky Mountain Power itself often controls the time upon which a project can be constructed, then I recommend that the QF be able to select a COD which is at least as far out as Rocky Mountain Power's interconnection study shows that COD can be achieved. So, if Rocky Mountain Power's transmission study says that the interconnection will be complete in 36 months, then the QF should be able to select a COD of at least 36 months.

Q. Have other states concluded that a QF should have a reasonable amount of time before contract execution and commercial operation date?

A. Yes. In Oregon, all parties, including PacifiCorp, agreed that QFs should have the right to select a period of up to three years, and should be able to demonstrate that a longer period is warranted under certain circumstances.[1] In addition, the QF is entitled to a one year cure period if they miss their COD. Allowing too little time between contract execution and delivery can create a barrier for QFs because they generally cannot obtain financing for a new project until after they have executed a PPA. This means that QFs

[1] *Re Commission Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 15-130 at 2 (April 16, 2015); OAR 860-029-0120(4).

must wait for execution of a standard contract before commencing many of the steps that are necessary to bring a resource on line. Oregon's policy was adopted in 2015, before Rocky Mountain Power's interconnection and transmission reached its current situation in which Rocky Mountain Power has experienced an unprecedented level of interconnection delays. Given that conditions are worse, even additional time is warranted.

Q. Can existing projects require as much time as new projects between the time of executing a power purchase contract (replacement contract) and the new power delivery date?

A. Yes. In Oregon both new and existing QFs have the same period of time between the signing of a new contract or replacement contract and the commencement of power deliveries under such contract.[2]

Q. Why?

A. Existing projects also may need a significant period of time between execution of a new contract (replacement contract) and expiration of their current contract. Many existing projects have been operating for years, and they often require upgrading of their equipment and facilities, especially interconnection facilities and equipment. These investments require study, planning, financing, and construction similar to those of new projects. This means that these QFs need to enter into new PPAs well in advance of the expiration of the current contract because the interconnection process, even for existing facilities, can take multiple years. Existing QFs often must first enter into a new power

[2] OAR 860-029-0120(4).

purchase agreement to obtain financing for both the interconnection and facility construction, and thus they too can experience a delay between when they sign an agreement and when they become "operational" under that contract.

Given that interconnection process has become so delayed, I recommend that the Commission provide all QFs with the right to select a COD four years from contract execution or the date upon which the utility can interconnect them. Furthermore, that this time-frame be considered as a reasonable advance period for entering into a replacement contract.

Q. Should QFs be allowed reasonable cure periods?

A. Yes. For missing their COD, I recommend that a QF be allowed a one year cure period as a matter of right. A QF should be able to obtain a longer period if there are delays caused by the utility, including transmission and interconnection delays beyond what was estimated at the time that the QF signed its PPA.

X. THE ABILITY TO ESTABLISH A LEGALLY ENFORCEABLE OBLIGATIONS SHOULD NOT BE CONSTRAINED

Q. What is the issue regarding legally enforceable obligations?

A. A QF has the right to receive a legally binding offer to establish a power sale to a utility pursuant to a contract or a legally enforceable obligation. While the Commission has attempted to streamline and reduce the potential difficulties in the QF contract completion and negotiation process, the process still can result in significant disputes between the QF and a utility. This is especially true when the avoided cost prices are expected to drop or lower prices already have been filed with the Commission.

Once discussions regarding a purchase contract reach an impasse due to the