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.	))))))))	CORONAL DEVELOPMENT SERVICES POST-HEARING BRIEF PHASE II

I. INTRODUCTION

Pursuant to the Administrative Law Judges' September 16, 2015 Ruling, Coronal Development Services ("CDS") submits this post-hearing brief responding to the pre-hearing briefs of PacifiCorp and the Oregon Public Utility Commission (the "Commission" or "OPUC") Staff. CDS continues to recommend that the Commission provide qualifying facilities ("QFs") with reasonable options to have their net output wheeled out of a utility's load pocket. PacifiCorp has failed to provide any reasonable basis why short-term transmission arrangements should not be used to wheel a QF's net output. Similarly, neither PacifiCorp nor Staff explain why QFs should be prevented from using other dependable, but lower cost, third party transmission options, including those that the company uses to wheel its own generation. A QF should not be required to have its net output delivered using unnecessarily expensive long-term firm ("LTF") point to point ("PTP") third party transmission.

In summary, CDS recommends that the Commission should ensure that a QF in a load pocket should be:

- Provided detailed information regarding the existence of a load pocket;
- Provided detailed information regarding the proposed and actual transmission costs to wheel the power out of the load pocket, including but not limited to hourly generation and load profiles in the load pocket;
- Able to select among reasonable third party transmission options to deliver their power to load that best fits their operational circumstances;
- Able to choose to pay either fixed or actual transmission costs incurred during the contract;
- Able to pay for the third party transmission through a separate contract provision, and/or the option for an avoided cost price reduction; and
- Provided relevant billing information and able to challenge billing errors.

II. ARGUMENT

1. There Are Numerous Dependable Third Party Transmission Options

PacifiCorp argues that it needs "dependable" transmission agreements to deliver a QF's net output to load for the full length of a contract term, and insists that LTF PTP is the only dependable option. PacifiCorp Pre-hearing Brief at 53-55. PacifiCorp discusses at length the operations and rules regarding its separate transmission and merchant functions, but does not address the fact that third party transmission providers are willing and able to offer other lower cost and reliable arrangements. Id. Staff's position has evolved over the course of this case, but now supports PacifiCorp only using LTF PTP transmission to deliver QF power to load. Staff Pre-hearing Brief at 41-43. Staff does not provide any analysis regarding why other transmission options should not be used. Id.

PacifiCorp's proposal for QFs in this case should be contrasted with the more flexible approach it takes for company owned generation. The evidence demonstrates that PacifiCorp does not always use the most reliable and expensive transmission to wheel its own generation to load. CREA/600, Skeahan/14; ODOE/1200, Broad/3, 6; CREA/500, Skeahan/23-24; Coalition/400, Lowe/29; Coalition/500, Lowe/18. Instead, PacifiCorp also uses a variety of lower cost third party transmission options to more efficiently and economically wheel the company's own generation. Id. The Commission should be skeptical of the company's recommendations because it is attempting to impose an extremely costly and more reliable transmission requirement on QFs than it does for itself.

Northwest regional third party transmission providers are willing and able to provide flexible and lower cost options that PacifiCorp can use to deliver QF power. PacifiCorp has also demonstrated that it has been able to use these lower cost third party transmission arrangements to reliably wheel QF power to load. PAC/1000, Griswold/24-28; PAC/1300, Griswold/19; ODOE/800, Broad/16. There is no reason why QFs should not have the option to use options similar to those that have already been effectively used to wheel a QF's net output out of a load pocket.

Some of the commonly used less costly third party transmission arrangements PacifiCorp uses to deliver both its own and QF power include its contracts with Bonneville Power Administration ("BPA") and other publicly owned Northwest utilities. BPA is the major regional third party transmission provider, has legacy use of facility and general transfer transmission agreements, and its transmission operations are generally not regulated by the Federal Energy Regulatory Commission. In addition, there are other unregulated Northwest publicly owned utilities with transmission that can be used to deliver power more cost effectively than LTF PTP. PacifiCorp has been able to take advantage of BPA's and these other utilities' flexibility to obtain lower cost transmission for itself and QFs. For example, PacifiCorp was able to obtain a 40 percent discount from BPA for CDS's own projects because the transmission was only across a substation. PAC/1300, Griswold/19. Requiring any QF to pay for LTF PTP transmission in this circumstance would have resulted in more than a doubling of the transmission costs with no increase in reliability.

PacifiCorp has also dependably used short-term firm and conditional firm third party transmission for both its own and QF generation. PAC/1000, Griswold/24-28; PAC/1300, Griswold/19; ODOE/800, Broad/16. PacifiCorp's actions regarding the Threemile Canyon projects are a good example of third party transmission providers working flexibly to deliver a QF's net output to load. PacifiCorp's service with BPA allowed them to change or re-direct the point of delivery and point of receipt, which "PacifiCorp has in fact done so to move output from the Three Mile Canyon Wind QF to PacifiCorp's loads." CREA/500, Skeahan/23; CREA/502, Skeahan/1-2. PacifiCorp was also able to wheel the net output of the Threemile Canyon projects using short-term firm transmission without any difficulties. PAC/1000, Griswold/25-27. PacifiCorp now uses conditional firm BPA transmission for these projects, which allows BPA limited curtailment rights for certain events and hours. Id. PacifiCorp admits that the "possibility of a directed curtailment" under this product is an "acceptable form" of transmission. Id. Again, the most expensive form of transmission is unnecessary.

The above examples are simply illustrative of the interest of regional third party transmission providers, especially BPA, to work with PacifiCorp to move QF power out of load pockets. The Northwest transmission system is in a dynamic state with the potential for additional significant changes with PacifiCorp participating in an Energy

Imbalance Market and the company exploring joining the California ISO. As explained by CREA witness Brian Skeahan:

> Conditional firm products, development of rates for short-term firm and non-firm PTP service, and the utilization of unused PTP transmission rights on a secondary market are all reflective of these changes, and are intended to achieve a more efficient and economical use of the region's transmission systems. The Available Transmission Capacity (ATC) on the grid is also subject to changes as the transmission system is utilized in different and more efficient ways and the system itself is added to and improved. A single, long-term transmission solution imposed upon a QF is not in keeping with efforts in the Pacific Northwest to utilize the transmission system in the most efficient and economical way possible.

In summary, PacifiCorp is requesting that the Commission allow it to impose third party transmission requirements that are more expensive and reliable than the company has historically used, and currently uses, for its own load and QFs. Instead of imposing a one size fits all solution, the Commission should direct PacifiCorp to work with QFs to allow them to select the third party transmission option that best fits their unique operational and load pocket circumstances.

2. QF Power Can Be Reliably Wheeled with Short-Term Transmission Options

PacifiCorp argues that QFs should be required to purchase transmission for the full length of a contract term regardless of how long the transmission will actually be needed. PacifiCorp Pre-hearing Brief at 54-55. Staff agrees with the QF parties that there is no need to purchase transmission for the entire length of the contract. Staff Pre-hearing Brief at 41-43. Specifically, Staff supports allowing QFs to have the option to require PacifiCorp to enter into new five-year transmission agreements, but does not explain why shorter-term contracts should not be allowed. Id.

Staff explains the essential contradiction in PacifiCorp's positions: the company claims that "the conditions creating a load pocket are so dynamic that it is unreasonable to require PacifiCorp to describe them every two years" but that QFs should still be required to enter into up to twenty-year transmission agreements. Id. at 42. Staff describes PacifiCorp's position as "remarkably unappealing." Id. Staff, however, does not go far enough in protecting QFs from PacifiCorp's effort to require QFs to purchase transmission for other periods longer than necessary.

QFs need the option to have PacifiCorp enter into short-term transmission arrangements because the need for third party transmission can change as load and generation is added or removed. ODOE/800, Broad/18-20. PacifiCorp admits that "a load pocket is a dynamic situation, going up or down as load and generation is added or removed . . . ." PAC/1600, Griswold/8. As long as the QF is willing to take the risk that transmission costs can increase, then the QF should be able to choose to have the need for and costs of third party transmission re-evaluated over the course of their contract.

Providing QFs with the option of having their net output wheeled using short-term arrangements is consistent with how all other aspects the QF contracting process works. QFs must deliver their power to their purchasing utility, which requires them to enter into numerous third party obligations. For example, QFs need to obtain property rights, permits, financing and interconnection agreements, and enter into construction, maintenance, and labor contracts. In addition, off system QFs need to deliver their power to PacifiCorp using third party transmission. QFs do not need to enter twenty-year terms for all of these arrangements, but can instead take the risks and benefits that costs and circumstances will change over the life of their contract. QFs should also have similar flexible options in terms how they guarantee delivery of their power using long or short-term third party transmission arrangements. The fact that PacifiCorp is acting as the QF's agent in acquiring third party transmission should not foreclose a QF's choices in how its meets its contractual obligations.

3. PURPA Does Not Require Long-Term Firm Transmission Agreements

PacifiCorp argues that PURPA requires the company to purchase long-term firm third transmission for QFs in load pockets. PacifiCorp Pre-hearing Brief at 54. PURPA is meant to encourage QF development, and the law should not be twisted to prevent QF's from choosing to have their net output delivered using reasonable transmission arrangements.

QFs that need a long-term firm arrangement should have the option to have LTF PTP transmission purchased to deliver their net output to load. However, other QFs should be able select to shorter-term, non-firm, conditional firm, and other options available in the transmission market. As explained in CDS's pre-hearing brief, PURPA and Oregon law require that the Commission provide QFs with reasonable third party transmission options. CDS Pre-hearing Brief at 4-7.

CDS agrees that QFs have the legal right to sell firm power at avoided cost rates that do not change over the contract term. 18 CFR § 292.304(b)(5), (d)(2)(ii); Small Power Prod. and Cogeneration Facilities; Regulations Implementing Sec. 210 of the Pub. Util. Reg. Pol. Act of 1978, Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980) (a QF has the right to "a fixed price contract for its energy and capacity at the outset of its obligation".). In addition, a QF has the right to insist upon a contract in which its deliveries are not subject to curtailment. Pioneer Wind Park I, LLC, 145 FERC ¶ 61,215, P. 38 (2013).

These are minimum requirements, and QFs also have the legal right to insist upon other terms and conditions that best suit their needs. For example, QFs can elect to sell power with rates, terms, and conditions that change over time, including non-firm power sales. 18 CFR § 292.304(d)(2)(i). In addition, a QF and the utility can agree to rates, terms, and conditions that differ from those that would otherwise be required by the Commission's regulations. 18 CFR § 292.301(b).

More important for the purposes of this proceeding, PacifiCorp fails to recognize that the Commission can approve programs that allow QFs to sell their power pursuant to other terms, rates, and conditions. Winding Creek Solar LLC, 151 FERC ¶ 61,103, P. 6 (2015); Otter Creek Solar, LLC, 143 FERC ¶ 61,282, at P. 4 (2013), reconsid. denied, 146 FERC ¶ 61,192 (2014). The only restriction is that these programs must be optional. Id. For example, FERC specifically found that it was appropriate for Vermont and California to offer solar feed in tariff programs that had terms, rates, and conditions that differed from the minimum requirements in PURPA because QFs still could sell power pursuant to different PURPA compliant programs. Id.

The Commission does not need to proscribe the exact terms and conditions for third party transmission because there are numerous potential options and it is impossible to foresee how markets will develop over the twenty years. Instead, the Commission should allow the QF to also choose to pay for the actual costs of reasonable third party transmission options, which would include short-term contracts and a narrowly tailored curtailment right to when the QF elects non-firm or conditional firm transmission. See CREA/500, Skeahan/25.

4. PacifiCorp Should Be Required to Share All Information Regarding the Need for and Costs of Third Party Transmission

PacifiCorp does not squarely address the request that QFs be provided detailed information regarding the existence of a load pocket, and the transmission costs to wheel the power, including but not limited to hourly generation and load profiles in the load pocket. PacifiCorp explains that much of this transmission information is non-public and cannot be shared between its merchant and transmission functions. PacifiCorp Pre-hearing Brief at 49. Regardless of the actual limitations on sharing information, these do not apply after a transmission request has been made. There are no significant FERC restrictions on PacifiCorp transmission sharing relevant information regarding the need for third party transmission for an actual QF project for which a transmission request has been made. Thus, the Commission's final order should simply require that QFs be able to obtain all relevant transmission information that PacifiCorp is legally authorized to provide.

III. CONCLUSION

The only reason to approve PacifiCorp's proposal in this case would be to erect an unnecessary barrier to QF development and prevent otherwise cost effective non-utility owned renewable energy projects from selling their power to the company. The Commission should instead adopt CDS's and other QF parties' recommendations to protect QFs from being required to pay for expensive third party transmission when there are lower cost and reliable options.

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Respectfully submitted,

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