BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1610

In the Matter of	STAFF CLOSING BRIEF
PUBLIC UTILITY COMMISSION OF OREGON,	
Investigation into Qualifying Facility Contracting and Pricing.	

I. Introduction.

At issue in this third phase of Docket No. UM 1610 is how to determine and allocate third-party transmission costs PacifiCorp incurs when a qualifying facility "QF" is located in a load pocket in PacifiCorp's service territory and PacifiCorp must acquire incremental third-party transmission to move the QF's generation to load. In May 2018, the Commission issued an order directing the parties to address two alternate proposals for determining and allocating third-party transmission costs were made by PacifiCorp and Staff at the conclusion of Phase II of Docket No. UM 1610.[1] Subsequently, the administrative law judge (ALJ) adopted the parties' suggestion to address the alternate proposals with two rounds of simultaneous briefs.

The two proposals at issue are described in the Commission's May 2018 order as follows:

> PacifiCorp's initial proposal to procure long-term, firm, point-to-point third-party transmission under a transmission provider's OATT for the entire term of a QF's PPA with assignment of the associated costs by PPA addendum to be consistent with PURPA.
>
> Staff's modified proposal that PacifiCorp offer a QF locating in a load pocket an option to choose either a price for long-term, firm, point-to-point third-party transmission under a transmission provider's OATT for the entire PPA term or a price for long-term, firm, point-to-point third-party transmission that would reset every five years.

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[1] Order No. 18-181, pp. 5-6.

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II. Staff proposal.

In its Phase III opening brief, PacifiCorp clarified that under its proposal, the cost of the third-party transmission allocated to the QF would be the actual cost of transmission charged by the transmission provider, which is subject to periodic changes. Therefore, the price for the third-party transmission charged to the QF would not be fixed at the time the standard contract between the QF and PacifiCorp is executed. Instead, PacifiCorp proposes the Company and QF would execute an addendum to the standard contract "that would describe the pass-through of transmission costs paid to the third-party transmission provider based on the pricing set forth in the third-party transmission provider's OATT."[2]

PacifiCorp's proposal, as a stand-alone option, is not consistent with the Federal Energy Regulatory Commission (FERC) regulation requiring that QFs have the option for a PURPA contract with prices fixed at the time the contract is executed. 18 C.F.R. §292.304(2)(d) provides that each QF shall have the option to either: (1) provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or (2) provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term. For purchases pursuant to a legally enforceable obligation, "the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either: (i) The avoided costs calculated at the time of delivery; or (ii) The avoided costs calculated at the time the obligation is incurred."[3]

The opening brief of the Community Renewable Energy Association (CREA) and the Renewable Energy Coalition (REC) (together the "Joint QF Parties") describes FERC issuances and federal court opinions that explain that the option for a contract with prices fixed at the time

[2] UM 1610 Phase III PacifiCorp's Opening Brief, p. 7.

[3] 16 U.S.C. 292.304(2)(d)(i) and (ii).

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of contracting was intended to provide QF developers the certainty necessary to invest in the facility. The Joint QFs also point to case law and opinions reflecting that "FERC has 'consistently affirmed the right of QFs to long-term avoided cost contracts or other legally enforceable obligations with rates determined at the time the obligation is incurred, even if the avoided costs at the time of delivery ultimately differ from those calculated at the time the obligation is originally incurred.'"[4]

Staff's Phase II proposal for two different pricing options is predicated on the PURPA implementation requirement that QFs have the option for a fixed price that is known at the time the QF enters into a standard contract or the utility otherwise incurs a legally enforceable obligation to purchase the QF's energy and capacity.[5] The first pricing option in Staff's proposal would allow the QF to elect a fixed price for third-party transmission for the term of the PPA. The actual price for third-party transmission for the term of the contract would not be known at the time the utility executes the standard contract or otherwise incurs a legally enforceable obligation to purchase the QF's output. This is because the actual cost of transmission service over the term of the standard contract will be based on prices charged under the transmission provider's Open Access Transmission Tariff (OATT), which are subject to change.

Under Staff's first option, PacifiCorp would forecast the cost of acquiring third-party transmission for the term of the PPA and this forecasted cost would be included in an addendum to the standard contract executed contemporaneously with the standard contract. Because the price charged to the QF for third-party transmission would be established for the term of the standard contract at the time of contract execution, this pricing option is consistent with 18 C.F.R. §292.304(2)(d).

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[4] Joint QF Brief *quoting Allco Renewable Energy, Ltd. v. Mass. Elec. Co.*, 208 F. Supp. 3d 390, 398-400 (D. Mass. 2016) (*quoting JD Wind 1, LLC*, 130 FERC ¶ 61,127, 61,631 (Feb. 19, 2010), and holding that rate based on unknown, future market prices does not comply with 18 C.F.R. § 292.304(d)(2)(ii)).

[5] UM 1610 Phase II Staff Prehearing Memorandum, pp. 40-42 (September 2, 2015).

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The second pricing option in the Staff proposal is based on the availability of transmission service contracts for five-year increments. Under the second pricing option, the QF could elect to have PacifiCorp acquire long-term, firm, point-to-point transmission, in five-year increments. Prior to renewing any third-party transmission contract at each five-year mark, PacifiCorp would evaluate whether third-party transmission is still needed to move the QF's generation to load and would discontinue purchasing the transmission if it is no longer needed. Under this option, PacifiCorp would forecast the cost of transmission prior to entering into each five-year commitment and the cost allocated to the QF would be updated at every five-year increment. PacifiCorp's agreement to acquire transmission in five-year increments, the forecasted cost of the first five-year increment, and the parties' agreement that the QF would pay the forecasted cost of transmission in subsequent years, would be included in an addendum to the standard contract.

Staff's proposal, which includes two alternate pricing options, is intended to adhere to the PURPA requirement that QFs have the option to sell generation at a fixed price that is determined at the time of contract execution (or legally enforceable obligation) but also provide QFs and PacifiCorp a more flexible pricing option that balances the interests of ratepayers and QFs. The QF benefits under the flexible pricing option because the utility is required to revaluate the need for third-party transmission every five years. PacifiCorp's ratepayers benefit because requiring the utility to forecast the transmission costs in five-year increments diminishes the risk, or at least the potential for harm, associated with forecasting the costs of transmission service for the entire term of the contract.

As PacifiCorp notes, a fixed-price option like that in the Staff proposal carries with it risk that the utility's actual cost of transmission will vary from the prices charged to a QF that are based on forecasted costs. However, the Commission cannot address this risk by eliminating the fixed-price option because a fixed-price option is necessary to comply with 16 C.F.R. § 292.304(2)(d). Instead, the Commission can alleviate the risk to some degree by adopting Staff's

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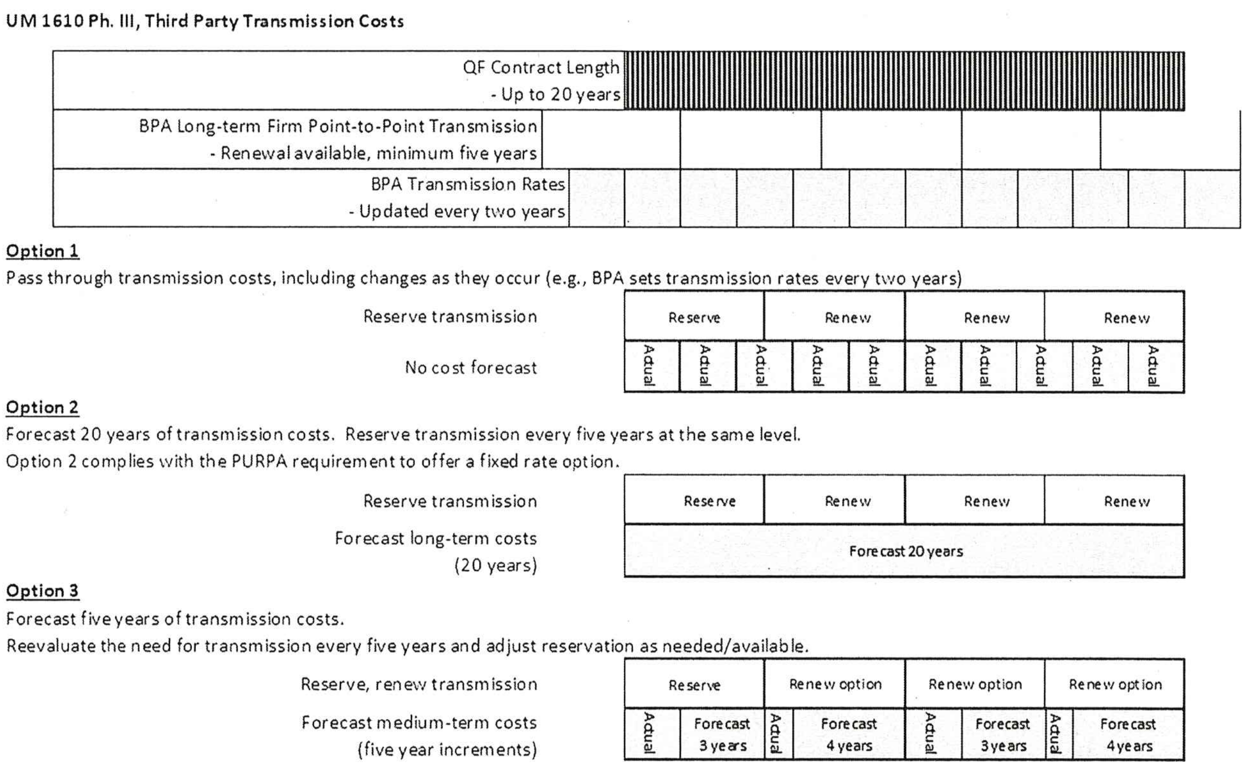
proposal with the second pricing option that includes updates to the forecasted transmission costs every five years.

III. The Joint QFs' proposal.

The Joint QFs recommend that the Commission adopt PacifiCorp's proposal *and* Staff's proposal and provide QFs with three pricing options: (1) prices based on PacifiCorp's actual costs and subject to change throughout the term of the standard contract; (2) prices fixed at the time of contract execution based on the utility's forecasted costs for the term of the contract; or (3) prices fixed at the time of contract execution and updated on five-year increments if and when PacifiCorp renews its third-party transmission rights. Staff supports the Joint QFs' recommendation.

The figure below sets forth the three options.



Staff anticipates that PacifiCorp will oppose the Joint QFs' recommendation, but only because PacifiCorp believes it is inconsistent with PURPA to have an option for a fixed price for

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the entire term of the contract because of the risk that PacifiCorp's actual costs will differ from the forecasted costs. For the reasons discussed above, the fixed-price option proposed by Staff is not inconsistent with PURPA but is in fact required by PURPA. Furthermore, 18 C.F.R. §292.304(5) specifically provides that avoided cost prices that differ from the utility's actual avoided costs over the term of the contract do not violate the pricing provisions of PURPA.

Staff acknowledges that although it is permissible under PURPA for a utility's actual avoided costs to diverge from prices paid to a QF, the risk that this may occur is one the Commission takes very seriously and attempts to ameliorate when possible. The other two pricing options discussed in this brief do address the risk and potential harm identified by PacifiCorp. However, because the Commission must ensure that QFs have a fixed price option, the Commission cannot eliminate the risk that actual costs may diverge from forecasted prices by eliminating the fixed-price option. Instead, the reasonable method of addressing the risk is to require PacifiCorp to offer all three options presented in Phase III.

IV. Staff recommends the Commission adopt two of the three administrative requirements proposed by the Joint QFs.

The Joint QFs recommend that the Commission impose the following administrative requirements along with the three pricing options discussed above.

> (1) The fixed-price reduction for third-party point-to-point transmission shall be published and made available with PacifiCorp's avoided cost rate schedule and thus subject to review and challenge along with other rate components at the time avoided cost rates are approved.
>
> (2) The rate schedule and standard contract should also include the following explanatory points and requirements:
>
> (a) The incremental third-party transmission cost deduction's applicability and, if applicable, the cost amount, would be determined on a contract-by-contract basis;
>
> (b) If PacifiCorp determines that incremental third-party transmission costs should be assigned to the QF, PacifiCorp will immediately provide the QF with a copy of the studies performed by PacifiCorp Transmission and any other applicable third-party Transmission Providers that PacifiCorp

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

(c) QFs may challenge PacifiCorp's determination of the need for third-party transmission that imposes an incremental cost on PacifiCorp, and PacifiCorp's proposed cost for such charges, in a forum with jurisdiction to resolve such dispute; and

(3) A QF that is already a network resource making sales to PacifiCorp under an existing PPA remains a network resource and is not subject to additional transmission costs upon renewing its PPA.

Staff supports the Joint QFs' administrative requirements nos. 1 and 2. Staff does not support the Joint QFs' proposed third administrative requirement that would prevent PacifiCorp from requiring a QF to pay for third-party transmission upon renewal of an existing PPA. An existing PPA does not provide a QF with a right to be free from third-party transmission charges in the future.

V. Conclusion.

Staff recommends the Commission adopt both Staff's modified proposal and PacifiCorp's proposal and provide QFs three options related to paying third-party transmission costs incurred to transmit a QF's generation from a load pocket in PacifiCorp's service territory.

DATED this 8th day of January 2019.

Respectfully submitted,

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