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 CLOSING BRIEF 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 closing brief in response to the Public Utility Commission of Oregon's ("OPUC" or "Commission") Order No. 18-181 and in response to Staff and PacifiCorp's Opening Briefs. In Order No. 18-181, the Commission directed the parties to further address two proposals for addressing how to calculate and assign third-party transmission costs attributable to qualifying facilities ("QFs") located in an alleged "load pocket."

The Joint QF Parties provided extensive background and detailed recommendation in the Opening Brief, and we refer the Commission to that brief for our recommendation, which remains the unchanged. This closing brief is limited to a response to the arguments of PacifiCorp. As explained below, PacifiCorp's recommendation fails to grapple with the requirement by the Federal Energy Regulatory Commission's ("FERC") that the OPUC must offer fixed-price rates to QFs and that therefore any rate reduction associated with alleged third-party transmission costs must include an option for a forecasted fixed-price reduction. Offering a time-of-delivery rate alone is unlawful. PacifiCorp's opening brief also glosses over the complex administrative issues that the Commission would also have to implement in order for any allocation of such third-party transmission costs to be reasonable or lawful.

The Joint QF Parties also again reiterate that we remain concerned that the alleged load pocket problem – which conveniently exists *only* with regard to QFs and not any PacifiCorp-owned generation – is not a real problem. The Commission may wish to simply revisit its decision to attempt to allocate these alleged third-party transmission costs only to QFs in light of the extremely limited circumstances where any such incremental costs could exist.[1]

II. ARGUMENT

The opening briefs illustrate fundamental differences in how the parties interpret the two proposals identified in Order No. 18-181 and how they would be implemented. As articulated in the Joint QF Parties' Opening Brief and herein, the Public Utility Regulatory Policies Act of 1978 ("PURPA") requires that the Commission offer QFs a transmission cost option that is fixed over the term of the QF's power purchase agreement ("PPA"). The Commission may also offer alternative pricing mechanisms that may be more appealing to QFs and/or PacifiCorp, so long as the QF has the option to select the pricing mechanism including the fixed-price option required

[1] In addition, as CREA and the Coalition explained in previous briefing, PacifiCorp has changed how it seeks to address the alleged load pocket problem. Instead of requiring QFs to pay for third-party transmission costs, PacifiCorp is now often requiring QFs to pay for prohibitive transmission level upgrades through the interconnection process. However, the Commission elected not to address this problem in this proceeding. *Re Commission Investigation into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 18-181 at 3-4 (May 23, 2018). This has contributed to no new QFs being able to be built in PacifiCorp's service territory. In Oregon (but not most other states), PacifiCorp has won the Oregon PURPA wars, harming ratepayers and independent power producers (especially small community-based projects) by building hudge amonts of more expensive Wyoming wind and transmission.

by PURPA. Finally, the Commission must adopt procedural and administrative protections to ensure that the process for evaluating and assessing the costs of third-party transmission is fair.

A. The Option for Long-Term, Firm, Point-to-Point Third-Party Transmission Must be a Fixed-Price Option

PacifiCorp and Staff have a fundamental disagreement (or misunderstanding) on the Commission's intended description of the two pricing options in Order No. 18-181 – in particular with regard to whether the pricing options must include a forecasted, fixed price for the term of the PPA. The first option at issue is that, to be consistent with PURPA, PacifiCorp procure long-term, firm, point-to-point third-party transmission under the transmission provider's OATT for the entire term of a QF's PPA with the assignment of the associated costs by PPA addendum. PacifiCorp asserts that the addendum "would *not* have a pre-determined dollar-per-megawatt-hour transmission price" but rather, the transmission price under this proposal would "periodically change over the duration of the PPA as the third-party transmission provider modifies its transmission rates." *PacifiCorp's Opening Brief* at 7 (Nov. 29, 2018). On the other hand, Staff's interprets this proposal as offering the QF "a fixed price that is known at the time of contracting." *Staff's Opening Brief* at 4 (Nov. 29, 2018)

The Joint QF Parties agree with Staff that, if the Commission moves forward with assigning PacifiCorp's alleged third-party transmission costs to QFs, then the Commission must provide an option for a long-term fixed-price avoided cost rate, including forecasted avoided costs deductions from the otherwise applicable rates to account for forecasted third-party transmission costs. Failing to do so would be inconsistent with PURPA because the Commission's implementation of PURPA would fail to provide for a fixed-price option under 18 C.F.R. § 292.304(d)(2)(ii) to each QF choosing to sell to PacifiCorp.

In contrast, PacifiCorp's proposal is to provide QFs it identifies as load pocket QFs with only a time-of-delivery pricing option, under 18 C.F.R. § 292.304(d)(2)(i), where the avoided cost rates are not "calculated at the time the obligation is incurred." 18 C.F.R. § 292.304(d)(2)(ii) (2018). Instead, one major element of the overall avoided costs – PacifiCorp's alleged incremental third-party transmission costs – would be "calculated at the time of delivery." 18 C.F.R. § 292.304(d)(2)(i). Should the Commission adopt PacifiCorp's proposal, then it would run afoul of PURPA's requirement that the QF have the option to sell power based on the avoided costs calculated at the time the legally enforceable obligation is incurred. *See* 18 C.F.R. § 292.304(d)(2).

PacifiCorp's concerns regarding the inability to perfectly predict the exact price of transmission over a 20-year contract term under the fixed-price option are inherent in setting avoided cost rates and do not provide sufficient justification for depriving any QFs of a fixed-price option. PacifiCorp asserts that it cannot forecast the incremental transmission costs associated with a QF for the term of the PPA because it "cannot enter into a point-to-point transmission agreement with the third-party transmission provider that locks in pricing at the front end for the life of the transmission agreement." *PacifiCorp's Opening Brief* at 7. However, as we explained in our Opening Brief, this exercise in forecasting costs is no different than the inherent risk in any other avoided cost pricing component or mechanism.

Under PURPA, the QF has the right to choose to sell its power pursuant to a legally enforceable obligation for a specified term where the rates are based on the avoided costs calculated at the time the obligation is incurred. 18 C.F.R. § 292.304(d)(2)(ii). Under this option, rates will be lawful even if the fixed-price rate turns out, due to changed circumstances, to be different from the utility's actual avoided costs at the time of delivery. 18 C.F.R. § 292.304(b)(5). The scenario outlined by PacifiCorp is that the actual cost the utility pays to the third-party transmission provider may change over time. This is no different, for example, than the scenario where the actual cost PacifiCorp would have incurred to acquire integration services to accept a wind QFs' output is different from the forecasted wind integration costs that reduced the long-term fixed-price rates paid to wind QFs. Indeed, virtually every input to the long-term avoided cost rates – e.g., natural gas prices, wholesale market prices, capital and operation and maintenance expense of the avoided resource – are forecasted inputs to an overall long-term, forecasted rate paid over the life of the contract. Under current law, the QF has a right under PURPA to have its avoided cost price calculated at the time the obligation is incurred. Therefore, PacifiCorp's concerns do not provide sufficient justification for limiting QFs to a time-of-delivery pricing option.

Additionally, PacifiCorp's proposal, in practice, would potentially limit the QF's ability to obtain initial financing and ensure viable long-term economics. The QF would essentially be issuing a blank check to PacifiCorp for any alleged third-party transmission service without any assurance about what that expense will be going forward. Without some assurance, it would be difficult to project the long-term economics of the project and therefore, make initial financing more difficult to acquire. Indeed, the reason FERC's regulations require long-term fixed-price rates is to provide QFs with certainty as to expected revenue from the facility to support financing. *See Windham Solar LLC*, 157 FERC ¶ 61,134, at pp 6-8 (Nov 22, 2016). As such, without a fixed-price option over the term of the PPA, PacifiCorp's proposal would be impractical and defeat the purposes of FERC's PURPA regulations.

PacifiCorp's arguments also ring hollow because PacifiCorp has consistently made no effort whatsoever to assist QFs in limiting its alleged third-party transmission expense. As Staff notes in its opening brief, PacifiCorp has refused to provide a publicly available map identifying likely load pocket areas to allow prospective QFs to site their development or deliver their output to locations on PacifiCorp's system where there are no incremental third-party transmission expenses. Given PacifiCorp's own lack of cooperation, it is without merit for PacifiCorp to repeatedly allege in is brief that the problem is caused by the "QF's decision to deliver its output into a transmission constrained area." *PacifiCorp Opening Brief* at 1.

The Commission should adopt the detailed proposals set forth in the Introduction and Summary of the Joint QF Parties Opening Brief, *including* a long-term fixed-price rate. As fully articulated in their Opening Brief, the Joint QF Parties' recommended that the Commission adopt: 1) Staff's proposal for long-term, firm, point-to-point transmission for the term of the PPA and clarify that this is a fixed-price option; and 2) PacifiCorp's proposal that would allow the price to vary as the transmission provider modifies its rates, so long as the QF has the option to choose the pricing mechanism.[2] This provides the QF with the right it has under PURPA to a fixed-price, as well as an option that may be more appealing in some circumstances for both the QF and PacifiCorp.

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[2] CREA and the Coalition continue to support their argument raised in earlier rounds of briefing, but are limiting the recommendations in this phase to the alternatives identified in Order No. 18-181.

B. The Option for Third-Party Transmission that Resets Every Five Years Should Also be a Fixed-Price Option

There is further disagreement between Staff and PacifiCorp as to the mechanism for implementing Staff's second option: the option for a transmission price for long-term, firm, point-to-point third-party transmission that would reset every five years. PacifiCorp proposes that the five-year pricing proposal also be a time-of-delivery pricing proposal as opposed to a fixed-price proposal. Under PacifiCorp's proposal, PacifiCorp would bill the QF for the third-party transmission as those expenses are incurred, and PacifiCorp merely revaluates the *need* for the third-party transmission every five years. *PacifiCorp's Opening Brief* at 8. Staff, on the other hand, would set the price based on the "forecasted price" for transmission for each five-year increment. *Staff's Opening Brief* at 4. The Joint QF Parties, interpreted this five-year reset option in the same manner as Staff and asserted in their Opening Brief that the Commission clarify that this proposal would also be a fixed-price option over each five-year increment. The Commission could adopt both interpretations as different options available to the QF, so long as the Commission also adopts the fixed-price option for the term of the PPA (i.e., that does not re-set every 5 years) as required by PURPA.

C. The Commission Must Also Adopt Procedural Protections to Ensure PacifiCorp Does Not Overcharge QFs for Third-Party Transmission Costs

As fully articulated in the Joint QF Parties' Opening Brief, the Commission must also adopt critical administrative and procedural protections so that PacifiCorp does not over charge QFs for third-party transmission costs. Considering no other party submitted comments on any procedural or administrative protections, the Joint QF Parties will not repeat those arguments here, but simply provide a brief summary.

The Commission should provide the same protections to QFs in setting the rate for third-party transmission costs as it does for setting avoided costs generally. In Order No. 14-058, the Commission noted that third-party transmission costs were not accounted for in the avoided cost calculation and therefore "must be assigned to the QF in order to comport with PURPA avoided cost principles." Order No. 14-058 at 22. Therefore, since the Commission has concluded that its legal authority to act is derived from avoided cost principles, then it must provide for the same procedural and administrative protections that are afforded to QFs in the setting of avoided costs. These protections include:

- 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.

- Due to the fact-specific nature of the need for and incremental cost of any third-party transmission costs, the Commission should establish strict rules for calculating that cost.

- As fully articulated in the Opening Brief, PacifiCorp's rate schedule 37 and standard contract should clarify under what circumstances third-party transmission costs may be assigned (and/or applicable) to QFs, how those costs are determined, that any transmission studies making that determination will be promptly provided to the QF, the manner in which a QF can challenge that determination and the cost of the transmission, and that QFs that are existing network resources will not be subject to additional transmission charges.

III. CONCLUSION

The Joint QF Parties respectfully request that the Commission adopt the policies recommended herein as more fully outlined in the Opening Brief.

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Respectfully submitted,

Gregory M. Adams (OSB No. 101779)
Peter J. Richardson (OSB No. 066687)
Richardson Adams, PLLC
515 North 27th Street
Boise, ID 83702
Telephone: 208-938-7900
Fax: 208-938-7901
greg@richardsonadams.com
peter@richardsonadams.com

Of Attorneys for the Community Renewable Energy Association

Irion Sanger
Marie P. Barlow
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com
marie@sanger-law.com

Of Attorneys for the Renewable Energy Coalition