

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2283**

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Waiver of Competitive  
Bidding Rules

VITESSE, LLC'S COMMENTS

**I. INTRODUCTION**

Vitesse, LLC (“Vitesse”) submits these comments for consideration by the Oregon Public Utility Commission (“Commission”) at the August 22, 2023 public meeting. Vitesse respectfully requests that the Commission adopts Staff’s recommendation to grant PacifiCorp’s Application for Waiver of Competitive Bidding Rules (“Application”) with no conditions.<sup>1</sup>

Vitesse offers these comments specifically in response to the Staff Report’s discussion of potential alternative options for the Commission, both of which Vitesse strongly opposes. However, if the Commission imposes any conditions on PacifiCorp’s Application, then any conditions or changes to Schedule 272, Renewable Energy Rider Optional Bulk Purchase Option (“Schedule 272”) should apply prospectively and not to this or any existing agreements (“Schedule 272 Agreements”). Finally, if the Commission has any concerns regarding voluntary renewable tariffs and HB 2021, then Vitesse is open to addressing those in a separate proceeding.

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<sup>1</sup> Staff Report at 1 (Aug. 17, 2023).

## II. DISCUSSION

### A. The Commission Should Adopt the Staff Recommendation to Approve PacifiCorp's Application Without Conditions

PacifiCorp's Application concerns a Competitive Bidding Requirements waiver for the Hornshadow I and II solar generation projects ("Hornshadow projects") that were vetted and shortlisted in PacifiCorp's 2020 All-Source Request for Proposals ("RFP") but not ultimately contracted under that RFP.<sup>2</sup> PacifiCorp and Vitesse identified the Hornshadow projects as appropriate resources for PacifiCorp to meet Vitesse's needs pursuant to Schedule 272.<sup>3</sup> Staff recommends approval of PacifiCorp's Application without change, and Vitesse supports the Staff recommendation.

As discussed in PacifiCorp's Application, Vitesse has a time-sensitive need for additional service under Schedule 272, making PacifiCorp's Application appropriate to meet customer needs.<sup>4</sup> Negotiation or re-negotiation of Schedule 272 Agreements is a time consuming and laborious process, which is illustrated by the fact that the work on this Schedule 272 Agreement started in early 2021.<sup>5</sup> If PacifiCorp's Application were denied or conditioned in a way that substantially changes the nature of the agreement, Vitesse would likely face yet another multi-year process to procure an appropriate least-cost substitute resource, including but not limited to identifying a substitute resource, negotiations and contracting, pursuing the appropriate regulatory approvals, and the construction of the new renewable resource. This multi-year process could result in

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<sup>2</sup> PacifiCorp's Application at 3 (May 18, 2023).

<sup>3</sup> PacifiCorp's Application at 3.

<sup>4</sup> PacifiCorp's Application at 10-11.

<sup>5</sup> PacifiCorp's Application at 10.

Vitesse being unable to serve its already committed and constructed data center facilities with renewable energy.<sup>6</sup>

**B. Staff Proposes Alternative Options but Is Not Recommending Any Conditions**

For clarity, Vitesse here explains its understanding of the Staff Report and alternative options. Staff recommends that:

The Commission should waive the competitive bidding rules [“CBRs”] set forth in OAR Chapter 860, Division 089 for the Schedule 272 agreements recently executed by Pacific Power (PacifiCorp or the Company) and Vitesse, LLC (Vitesse) and noticed in UM 2163.<sup>7</sup>

Staff explains: “Staff concludes that there is good cause for a waiver of the CBRs and that waiving the CBRs to allow the PPAs to take effect is in the public interest.”<sup>8</sup> Thus, Staff’s motion recommends approval of the CBR waiver with no additional requirements.

The Staff Report later describes two alternative options that the Commission could take, but which Staff is not recommending, as conditions for approval. While Staff is asking the Commission to approve the Application without any conditions, Staff comments suggest the need for the Commission to have a discussion at the public meeting about the issues it has raised.

Vitesse explains and addresses the substance of these two options below. At a high-level, it is Vitesse’s understanding that Staff includes these options to lay out the

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<sup>6</sup> PacifiCorp’s Application at 10-11.

<sup>7</sup> Staff Report at 1.

<sup>8</sup> Staff Report at 7.

range of possible options that the Commission could take,<sup>9</sup> but Staff has already examined all options and chosen to recommend granting PacifiCorp’s waiver request without modification.

Staff’s two alternative options are: 1) requiring a contract re-opener in the Hornshadow Schedule 272 Agreement; or 2) outright suspending PacifiCorp’s voluntary renewable program tariffs, including but not limited to Schedule 272.<sup>10,11</sup> Of the two alternative options, Staff identifies the first alternative as “Staff’s recommended condition.”<sup>12</sup> Vitesse understands that “Staff’s recommended condition” simply refers to Staff’s secondary recommendation, which would only apply if the Commission first rejects Staff’s primary recommendation that “[t]he Commission should approve the CBR waiver without [any] condition.”<sup>13</sup>

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<sup>9</sup> The Staff Report frames these options as provided to foster understanding. *See* Staff Report at 7 (“Staff concludes that there is good cause for a waiver ... However, *Staff believes it is important for the Commission to understand that PacifiCorp is taking on a risk by entering into a long-term REC sale with Vitesse at this time. If the Commission chooses to address these risks as they may relate to this resource, the Commission has a number of options.*” (emphasis added)).

<sup>10</sup> Staff Report at 7-8. Vitesse understands that Staff’s second alternative would approve the Schedule 272 Agreement at issue here, and then suspend Schedule 272 precluding any new Schedule 272 Agreements for some undetermined period of time. If Staff is proposing suspending Schedule 272 without approving the Schedule 272 Agreement at issue here, then Vitesse would be left with no option to meet its renewable energy goals in Oregon.

<sup>11</sup> Staff also states that: “The Commission could also approve the CBR waiver without Staff’s recommended condition, with the understanding that this PPA will have to be evaluated for prudence in a future power cost proceeding. Staff believes the condition to amend the Schedule 272 Agreement, if necessary, could help address any prudency concerns.” Staff Report at 7. Vitesse understands that this is normal regulatory process and does not view it as an additional or separate condition.

<sup>12</sup> Staff Report at 7.

<sup>13</sup> Staff Report at 7.

### **C. Vitesse Opposes Staff's Alternative Pathways as Unnecessary and Harmful**

Vitesse opposes both of Staff's alternative approaches as contrary to existing guidance and harmful to Oregon's business sector and renewable energy policies.

Neither approach would provide the stable regulatory environment necessary for Vitesse and similar businesses with strong renewable energy commitments to make substantial investments in Oregon. However, if the Commission wants to take any action in addition to approving PacifiCorp's Application, then Vitesse recommends that the Commission temporarily impose limitations on *prospective* use of voluntary renewable tariffs, including but not limited to Schedule 272, pending completion of an expedited review and investigation. Vitesse emphasizes that it opposes any condition that has *retroactive* effects.

#### **1. Staff's Alternative Conditions Are Harmful to Oregon's Business Climate and Vitesse**

The potential conditions in the Staff Report are harmful to businesses like Vitesse that wish to meet their renewable energy goals. Vitesse made business decisions and investments premised upon the availability of Schedule 272, and a stable and supportive regulatory setting. The rules for voluntary renewable energy purchases should not change after resource negotiations were pursued and concluded.

Staff's first alternative option of imposing a new contract re-opener to address a remote future risk has a real impact on the negotiated terms of the Agreement. At best, it would likely require changes in key commercial criteria, which may or may not be supported by PacifiCorp or the developer. At worst, it would lead to project termination and/or Vitesse falling short on its public renewable energy commitments. Large load

customers are under increasing pressure to adhere to their sustainability commitments – the ability to reliably and efficiently source renewable energy in advance of state-level goals is critical to many corporations in their siting decisions and operational continuity. These outcomes would be not just be harmful to Vitesse, but to Oregon’s overall business climate.

**2. Staff’s Alternatives Appear Premised on an Unlikely Legal Interpretation of HB 2021 That Should Not Affect These Projects**

Overall, it is Vitesse’s understanding that Staff has no specific concerns with the Hornshadow projects and instead raises these alternative pathways due to some uncertainty about how HB 2021 might be implemented. Staff’s contract re-opener provides:

If at some future point the sale of [renewable energy certificates (“RECs”)] to Vitesse under this Schedule 272 agreement prevents Oregon from reporting its share of generation from the Hornshadow facility as non-emitting, the Schedule 272 agreement must be amended to ensure the RECs are retired in such a way that Oregon’s share of generation from the resource is considered non-emitting.<sup>14</sup>

This is an unlikely future interpretation of the statute.<sup>15</sup>

Vitesse is not a party in UM 2273 and has not participated in the workshops or other meetings; however, Vitesse understands that some parties in UM 2273 have raised

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<sup>14</sup> Staff Report at 7.

<sup>15</sup> The Commission is considering this now, but its preliminary determination is that it does not see that it has the “discretion to interpret HB 2021 to allow [the Commission] to insert a requirement that RECs be retired to demonstrate compliance.” *In re Commission Investigation Into House Bill 2021 Implementation Issues*, Docket No. UM 2273, Order No. 23-194 at 3 (June 5, 2023).

“double counting concerns” related to the non-power attributes of renewable energy.<sup>16</sup> In reviewing these concerns, the Commission has provided its “initial view that we do not have authority or responsibility to globally restrict the use of RECs not retired for HB 2021 ... to avoid what such regulators and certifiers may conclude are double-counting impacts.”<sup>17</sup>

However, even if the Commission concluded that it had such authority to restrict the use of RECs not retired for HB 2021, then there is no reason to conclude that Schedule 272 does not contribute to the decarbonization of PacifiCorp’s system in Oregon or is in any way inconsistent with HB 2021. Vitesse notes that, as a practical matter, since Vitesse’s load is based in Oregon and the sale of RECs would stay within Oregon’s borders, there is no reason that this Schedule 272 Agreement should present any impediment to achieving HB 2021’s goals in this unlikely interpretation.

In particular, this Schedule 272 Agreement does not risk double counting because the RECs are being retired by Vitesse to reduce the carbon emissions of its Oregon loads. In terms of meeting HB 2021’s requirements of Oregon being emissions free, it should not matter if PacifiCorp or Vitesse retires the RECs. However, for Vitesse’s renewable energy goals, it is critical that Vitesse has the right to claim responsibility for the reduction in carbon emissions resulting from Vitesse’s choice to enter into a voluntary program and cause the construction of new renewable resources. Schedule 272 and other

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<sup>16</sup> Docket No. UM 2273, Order No. 23-194 at 4; Green Energy Institute Opening Brief at 3-6, 13-15 (July 24, 2023); Center for Resource Solutions Comments at 3-12 (July 24, 2023); Citizens Utility Board of Oregon Opening Brief at 17 (July 25, 2023); NewSun Energy Opening Brief at 7 (July 24, 2023).

<sup>17</sup> Docket No. UM 2273, Order No. 23-194 at 4.

similar renewable options should help meet HB 2021’s requirements more quickly because it reduces the emissions associated with Vitesse’s Oregon load.

It appears that the Commission has determined that it may review whether there needs to be changes to Oregon’s voluntary renewable energy programs like Schedule 272 at some point in the future. In its HB 2021 investigation, the Commission has stated that: “We will seek input from the parties in Phase I(b), as discussed below, on which Oregon-regulated programs need examination of the viability of REC emissions claims after 2030 and with what level of priority or timeline.”<sup>18</sup> The Commission also stated that: “Another broad area for future Staff-led work is addressing HB 2021’s impacts on the voluntary customer program landscape, including issues related to accounting, competitiveness, and crediting/pricing mechanisms.”<sup>19</sup> The Commission should not pre-judge this question or assume the worst possible future.

**3. Vitesse Is Open to the Commission Addressing Concerns Regarding Voluntary Renewable Tariffs and HB 2021 In a Separate Proceeding and Should Not Require Modification of Any Existing Schedule 272 Agreements**

Vitesse notes it would not be opposed to *prospective* measures or changes to Schedule 272 or other voluntary renewable energy programs, if the Commission felt that was necessary. Vitesse does not have visibility to other Schedule 272 Agreements under negotiation with other customers and assumes such measures would have limited or no impact to others seeking voluntary procurements. To the extent the Commission has concerns about continued use of voluntary programs or unlikely risks with HB 2021

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<sup>18</sup> Docket No. UM 2273, Order No. 23-194 at 4.

<sup>19</sup> Docket No. UM 2273, Order No. 23-194 at 9.

compliance materialize, Vitesse is open to holding further discussions to address and resolve those concerns in the appropriate proceeding.

However, the Commission should not impose retroactive changes to the regulatory paradigm upon which Vitesse relied when it voluntarily contracted for the Hornshadow projects, especially where the risk in question has yet to materialize and is unlikely. If the Commission wants to take any action besides approving PacifiCorp's Application, then it should only make changes (or a suspension of the program) on a prospective basis and should not require modification of existing Schedule 272 Agreements. Any prospective suspension in Schedule 272 or similar programs should be temporary until the concerns regarding HB 2021's implementation are resolved to ensure continuity and certainty for business investments.

**4. PacifiCorp's Application Is Consistent with Prior Commission Guidance, Which Does Not Require a Contract Re-Opener and Blessed the Continued Use of Schedule 272 As Proposed Here**

This Schedule 272 Agreement is entirely consistent with the Commission's May 2021 order revising the Schedule 272 tariff and program. In early 2021, stakeholders, including Staff and Vitesse, met and collaborated to develop certain changes to Schedule 272 to address the Commission's concerns and supported the tariff's continued use.<sup>20</sup> In May 2021, the Commission adopted these collaboratively developed changes and blessed the continued use of Schedule 272.<sup>21</sup> These changes served to minimize risks and

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<sup>20</sup> Docket No. UM 2163, Order No. 21-146, Appendix A at 1 (listing the changes).  
<sup>21</sup> *In re PacifiCorp, dba Pacific Power, Investigation into Schedule 272, Renewable Rider Optional Bulk Purchase*, Docket No. UM 2163, Order No. 21-146 (May 11,

increase transparency for non-participants. This is the first Schedule 272 procurement to be brought before the Commission since those revisions, and the work product of two years of earnest negotiation with PacifiCorp.

Vitesse explicitly stated at that time that it was participating because its existing facility in Prineville, Oregon was expanding and Vitesse therefore had “a continued need for new Schedule 272 contracts in the near future.”<sup>22</sup> At this time, Schedule 272 is the only viable option for Vitesse to match its growing load with 100% renewable energy. Since the 2021 engagement, Vitesse and PacifiCorp have identified appropriate resources to meet Vitesse’s needs, which are the resources presented in PacifiCorp’s Application. Vitesse was unaware of any potential concerns related to HB 2021 until after PacifiCorp filed its waiver request for the CBRs.

The Commission’s May 2021 order required the following changes to Schedule 272:

- No new individually negotiated Schedule 272 agreements where PacifiCorp has acquired or plans to acquire the underlying resource on an ownership-basis.
- 175 MWa cap on individually negotiated Schedule 272 agreements where PacifiCorp has acquired or plans to acquire the underlying Power Purchase Agreement (PPA)-based resource.
  - Calculated with resources situs-assigned to Oregon;

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2021). HB 2021 was signed by the Governor in July 2021, and the Oregon State Legislature had held three public hearings and a work session to discuss HB 2021 before the Commission’s May 11, 2021 decision. *See* HB 2021, Oregon State Legislature, <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2021>. If any revisions or conditions on the use of Schedule 272 were raised in 2021, then they could have been resolved prior to when the Hornshadow Schedule 272 Agreement was executed.

<sup>22</sup> Docket No. UM 2163, Vitesse’s Petition to Intervene at 2 (Apr. 22, 2021).

- Effective for Schedule 272 individually negotiated agreements executed on or after January 1, 2021;
- Does not include Pryor Mountain;
- No additional participation above the cap;
- Exception for qualifying facilities that the Company is compelled to purchase output from under the Public Utilities Regulatory Policies Act (PURPA) framework.
- Information disclosure process for each individually negotiated agreement to add transparency and support consideration of customer costs and risks associated with Schedule 272 PPAs in power cost proceedings.
- Sensitivity analysis in its future IRPs which considers the impact of executing PPA-based agreements up to the cap.<sup>23</sup>

Vitesse was aware of these conditions and sought to ensure that they were met. There is no dispute that the Schedule 272 Agreement for the Hornshadow projects satisfies the above criteria.

Staff asserts that its contract re-opener is “in line with the purpose of the UM 2163 notice requirements.”<sup>24</sup> Vitesse respectfully disagrees. A contract re-opener has vastly different implications on business arrangements than information disclosure processes. They are simply not comparable. Vitesse understands the primary purpose of the notice requirements was to ensure the Schedule 272 Agreements were consistent with the May 2021 Order, and not to impose new and unrelated conditions. Because PacifiCorp’s Application concerns a Schedule 272 Agreement that is fully compliant with the Commission’s existing guidance, the application should be granted without modification.

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<sup>23</sup> Docket No. UM 2163, Order No. 21-146, Appendix A at 1 (May 11, 2021)

<sup>24</sup> Staff Report at 7.

### III. CONCLUSION

For the reasons stated above, the Commission should adopt Staff's recommendation to approve PacifiCorp's Application without change or condition. Any concerns raised by Staff in its analysis should be deferred to a point at which compliance measures for HB 2021 are better understood, or comprehensively handled through a separate proceeding, or both.

Dated this 21st day of August 2023.

Respectfully submitted,

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