

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
SPECIAL PUBLIC MEETING DATE: May 4, 2021**

REGULAR  X  CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

**DATE:** April 26, 2021

**TO:** Public Utility Commission

**FROM:** Caroline Moore and Scott Gibbens

**THROUGH:** Bryan Conway **SIGNED**

**SUBJECT:** PACIFIC POWER:  
(Docket No. UM 2163)  
Investigation into Schedule 272, Renewable Rider Optional Bulk Purchase.

**STAFF RECOMMENDATION:**

Staff recommends the Commission direct PacifiCorp to file an updated Schedule 272 inclusive of the following changes:

- 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;
  - 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.

## **DISCUSSION:**

### Issue

Whether the Commission should approve Staff's recommended tariff changes to PacifiCorp's Schedule 272, intended to be in effect at least during the pendency of the Commission's investigation into Schedule 272 issues.

### Applicable Rule

Oregon Revised Statute (ORS) 756.040(1) requires the Commission to "represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates." In doing so, the Commission must "balance the interests of the utility investor and the consumer in establishing fair and reasonable rates." *Id.*

ORS 757.205 requires public utilities to file schedules showing all rates, tolls, and charges for service that have been established and are in force at the time. Pursuant to ORS 757.210(1)(a), the Commission may approve tariff changes if they are deemed to be fair, just, and reasonable. The utility bears the burden of demonstrating that the rate or schedule of rates proposed to be established or increased or changed is fair, just, and reasonable. *Id.*

Filings that make any change in rates, tolls, charges, rules, or regulations must be filed with the Commission at least 30 days before the effective date of the changes. ORS 757.220; Oregon Administrative Rules (OAR) 860-022-0015. Tariff filings to be effective on less than 30 days following notice of the change may be authorized with a waiver of less than statutory notice pursuant to ORS 757.220 and OAR 860-022-0020.

### Analysis

#### *Background*

PacifiCorp's Schedule 272 Renewable Energy Rider Optional Bulk Purchase Option provides a bulk pricing option for non-residential participants in the Blue Sky unbundled renewable energy certificate (REC) program. Schedule 272 also provides non-residential customers with the option to enter into an individually negotiated agreement

for the Company to purchase unbundled renewable energy certificates (RECs) on behalf of an individual customer.

PacifiCorp has been offering service under Schedule 272 since November 1, 2004.<sup>1</sup> In 2016, PacifiCorp sought updates to its Schedule 272 in part in an effort to “clarify in the tariff that [individually negotiated agreement] purchases made by the Company on behalf of participating customers may come from specified resources.”<sup>2</sup> PacifiCorp argued that this clarification would satisfy customers “that have a desire to be able to identify specifically the renewable or low carbon energy resource they are supporting economically.”<sup>3</sup> Following the 2016 changes, PacifiCorp began a practice of executing power purchase agreements (PPAs) to acquire the underlying energy from the specified resource from which they were procuring RECs to serve an individually negotiated agreement with a Schedule 272 customer. PacifiCorp states that the energy value of the PPA is reflected in cost-of-service rates and the REC price paid by the Schedule 272 participant(s) covers the remaining incremental cost of the resource procurement. In 2020, PacifiCorp procured a utility-owned resource (Pryor Mountain) to provide a participating customer with the RECs from the project, and stated that cost-of-service (COS) rates reflected the fixed and variable costs and non-REC benefits of the project, and the REC price paid by the Schedule 272 participant(s) covered any incremental cost above the resource’s system value.

In PacifiCorp’s 2020 general rate case proceeding (UE 374), Staff raised concerns about PacifiCorp’s use of Schedule 272 as a basis to procure utility-owned resources where the RECs would be sold to the participating customers at a contracted price, but with COS customers paying for the fixed and variable costs associated with a utility-owned asset. In general, Staff’s concerns were that Schedule 272 may be appropriately considered a Voluntary Renewable Energy Tariff (VRET), which would render it subject to the Commission’s VRET conditions. These conditions, among other protections for COS customers, limit utility ownership of VRET resources. Staff also raised concerns about risks to customers from resource acquisition outside of PacifiCorp’s integrated resource plan and the competitive bidding rules. In light of these concerns, Staff recommended that the Commission open an investigation into PacifiCorp’s Schedule 272 and direct PacifiCorp to refrain from entering into Schedule 272 contracts that involve RECs from an underlying utility-owned resource.

In Order No. 20-473, the Commission noted that its approval of Schedule 272 was based on the understanding that the RECs sold would be unbundled, and that specific

---

<sup>1</sup> PacifiCorp Advice No. 16-012 at 2.

<sup>2</sup> PacifiCorp Advice No. 16-012 at 1.

<sup>3</sup> PacifiCorp Advice No. 16-012 at 1.

resources would not be acquired to meet specific customer preferences,<sup>4</sup> and agreed with Staff that the acquisition of the Pryor Mountain wind resource to provide RECs under Schedule 272 to a single customer raised new, even more serious questions regarding the appropriate use of Schedule 272. In response to these concerns, the Commission:

- Ordered a cap of 175 MWa to Schedule 272 on “new PPA-based resources to supply Schedule 272 customers ...including Pryor Mountain ...unless PacifiCorp can demonstrate to the Commission in advance that it has mitigated the potential impacts on non-participating cost-of-service customers.”<sup>5</sup>
- Cautioned against procuring new utility-owned resources to supply RECs under Schedule 272.<sup>6</sup>
- Cautioned against using Schedule 272 to provide community-wide green tariffs.<sup>7</sup>

On January 29, 2021, PacifiCorp filed a Motion for Reconsideration and Clarification, which among other things, asked the Commission to clarify its ruling on Schedule 272. PacifiCorp argued that the cap was not supported by evidence on the record and thus should not be imposed. Alternatively, PacifiCorp asked the Commission to clarify how the cap and other interim restrictions will apply.

On February 12, 2021, Vitesse, LLC (Vitesse) filed a motion for clarification and reconsideration regarding the Commission directives related to Schedule 272, raising concerns that the Commission’s order could have the practical impact of eliminating Schedule 272 as a viable option for COS customers to pursue sustainability goals in Oregon. For this reason, Vitesse requested that the Commission reconsider and amend its order limiting the program, or in the alternative, should consider additional options for limitations and guidance for Schedule 272. As alternative options, Vitesse proposed: (1) not implementing the cap until 2022 or until PacifiCorp is further along in implementing its VRET; (2) excluding the Pryor Mountain wind project from measuring progress toward meeting the cap; (3) creating an expedited review process for PacifiCorp in cases where a near-term need for additional Schedule 272 transactions exceeds the cap; (4) amending the order so that the 175 MWa cap applies only to Oregon’s allocated share of PacifiCorp’s system resources.<sup>8</sup>

Staff, Oregon Citizens’ Utility Board (CUB), Calpine Energy Solutions (Calpine), and the Alliance of Western Energy Consumers (AWEC) all filed responses to PacifiCorp’s

---

<sup>4</sup> Order No. 20-473 at 132-133.

<sup>5</sup> Order No. 20-473 at 134.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Vitesse’s Application for Reconsideration and Clarification of Order No. 20-473 at 6.

motion. Calpine also filed a response to Vitesse's motion. Staff supported clarification of some aspects of the Commission's order related to Schedule 272, but did not advocate for reconsideration. Calpine opposed reconsideration of Schedule 272 issues, while CUB and AWEC took no position.

On March 29, 2021, the Commission issued Order No. 21-090 resolving PacifiCorp's and Vitesse's Motions for Reconsideration and Clarification. The Commission found good cause to clarify and reconsider in part its directives related to Schedule 272, but declined to adopt specific limitations as part of its order. In Order No. 21 -090, the Commission concluded:

We continue to find necessary some temporary limitations on procurement of specified resources to serve Schedule 272, pending investigation, due to our concerns set forth above. In our prior order, we had adopted a cap rather than suspend the program in recognition there is extensive customer demand. We recognize that neither the concept of a cap nor limitations on PPA-based contracts were raised by any party during this proceeding. Additionally, the parties have now raised a number of issues regarding implementation of the limitations set forth in in Order No. 20-473.

Accordingly, we reconsider the cap adopted in our prior order and, instead, will consider a tariff revision to implement limitations on the continued use of Schedule 272 related to any owned or new specified resources to address our concerns pending investigation. We direct Staff to bring to a public meeting within 45 days of this order recommended tariff revisions to implement appropriate limitations on an interim basis.<sup>9</sup>

#### *Schedule 272 Concerns*

As part of Order No. 21-090, the Commission specified several concerns regarding the acquisition of Schedule 272 with specified resources. These concerns include:

1. Pryor Mountain avoided the same portfolio analysis and scrutiny applied to the EV 2020 projects procured through the IRP and RFP processes.
2. COS customers may not ultimately realize economic benefits from the investment should market prices or resource performance not materialize as expected, or if lower cost zero-carbon resources are available when there is a demonstrated need for capacity.
3. Schedule 272 has not gone through the same rigorous discussion and review as arguably similar VRET programs offered by other utilities. This includes

---

<sup>9</sup> Order No. 21-090, at 14.

consideration of program design, risk allocation and mitigation, and direct access market protection.

4. Program participant protections may need to be further reviewed to ensure that large-scale offerings, such as community-wide green programs, do not impose unnecessary or unreasonable risks, and that all risks are clearly articulated to interested parties.
5. Whether or not Schedule 272 overlaps with a VRET.

Although conclusions cannot yet be reached on the above noted concerns, Staff's proposed amendments to Schedule 272, seeks to reasonably mitigate these concerns to the extent practicable, while balancing the desire of interested customers to meet their stated energy goals.

#### *Staff's Recommendation*

Staff provides several recommendations for limits on the use of Schedule 272 during the pendency of the UM 2163 investigation. These recommendations are intended to balance the need to limit costs and risk exposure for customers with the reality that PacifiCorp has not provided a VRET or other similar alternative for customers seeking a more specified renewable energy product.

#### **Utility Ownership**

Due to the Commission and Staff's concerns about customer protections and implications for the competitive marketplace, for an interim protection, Staff recommends that there be no additional utility-owned resources acquired for meeting Schedule 272 demand.<sup>10</sup> Utility ownership may be considered as part of the investigation.

#### **PPA-based Resources**

Staff understands the Commission's concerns to be centered on procurement of specified resources (either through a PPA or utility build) for the purpose of supplying Schedule 272 customers with RECs from the specified resource. As such, Staff recommends that the limitations proposed herein apply to RECs from specified resources where the utility is procuring the resource to serve Schedule 272 customer demand. RECs from unspecified resources, or where resources may be known but not procured for purposes of serving Schedule 272 demand, would not be subject to these limitations.

Staff recommends that the limits apply to individually negotiated Schedule 272 agreements where PacifiCorp has acquired or plans to acquire the underlying PPA-based resource. One exception to this proposal is Schedule 272 individually negotiated

---

<sup>10</sup> This includes procurement with future options to buy.

agreements that supply RECs from qualifying facilities that the Company is compelled to purchase under the PURPA framework. This framework already includes transparency and COS customer protections.

### **Cap on PPA-based Resources**

Commission concerns 2, 3, and 4, listed above, correlate with the scale of resources procured (and the corresponding potential costs and risks) for purposes of serving Schedule 272 customer demand. Staff finds a cap, designed to reasonably limit the potential scale of costs and risk to all customers, is appropriate as it is similar to the caps in place for direct access programs and VRETs. Staff finds that a cap of 175 MWh on Schedule 272, comparable to the VRET and direct access program caps, is a reasonable interim approach that would allow for additional customer participation but would ensure that the size of the program remains in the public interest pending investigation of Schedule 272.

### **Cap Methodology**

Staff recommends the cap should be calculated as if resources providing RECs to Schedule 272 participants are situs assigned to Oregon. Staff notes that this is different than how costs for the resources may actually be assigned (which are allocated on a system basis), but finds that a cap calculated on the Oregon share of a system basis allows for a program that would be roughly four times greater than either PacifiCorp's VRET cap or direct access cap, without the benefit of the conclusion from the Commission's investigation. It may be that the investigation illuminates that a change in allocation for purposes of calculating the cap is supportable, but such a conclusion is premature at this time. Staff finds its proposed methodology is the best way to balance the concerns about risks to COS customers and the competitive marketplace with customer interest in the program.

### **Inclusion of Pryor Mountain under the Cap**

Staff recommends that Pryor Mountain not be included under the cap. Staff finds that removing Pryor Mountain from the calculation of the cap as Vitesse suggests, provides a reasonable balance to allow participation in the program during the pendency of the investigation. While Staff has concerns about the size of PacifiCorp's Schedule 272 program on an interim basis – particularly given its size as equivalent to the Company's direct access cap and VRET cap – Staff is also sympathetic to customers that require options to meet their sustainability goals given the dearth of other options in PacifiCorp's portfolio. This would allow 175 MWh to remain in the cap.

### **Cap Timing**

Staff recommends that the Commission consider the cap effective for Schedule 272 individually negotiated agreements executed on or after January 1, 2021. While Staff

understands Vitesse's desire for room in the program to meet its goals in 2022, the implications of this option are unknown without knowing other customers' demand. A delay in implementation of the cap could result in a program that is substantial in size, particularly given PacifiCorp's comments related to customer interest in the program.

### **Procurement Notification Process**

Staff recommends that the Commission direct PacifiCorp to undertake the following process in order to add transparency to PacifiCorp's procurement process and to facilitate review of any acquired PPA resources in the appropriate power cost proceeding:

- PacifiCorp to undertake the following process in order to add transparency to PacifiCorp's procurement process and to facilitate review of any acquired PPA resources in the appropriate power cost proceeding:
  - Within 30 days of PPA execution, PacifiCorp will file a notice of contract execution (Notice) in UM 2163.
  - The Notice will include:
    - A description of the resources acquired including location, size, anticipated REC/MWh production, and expected online dates;
    - Analysis supporting the cost and benefits of the resources to all customers;
    - The REC price and supporting analysis; and
    - Description of administrative costs and how those are recovered.
  - Within 30 days of filing the Notice, PacifiCorp will host a workshop to address questions and comments from staff and stakeholders. Alternatively, this workshop could be set up as a special public meeting or commissioner workshop to allow for commissioner engagement.
  - No additional action is necessary in UM 2163 (i.e., no written comments, no staff report, no commission decision). However, Staff and other parties may file comments to the notice in UM 2163 and PacifiCorp will answer discovery requests from Staff and other parties outside of the TAM and PCAM as they pertain to Schedule 272 resources.
  - All PPAs will be subject to prudence review as part of an appropriate rate recovery proceeding.



### **IRP Implications**

Staff recommends that PacifiCorp include sensitivity analysis in its future IRPs which considers the impact of full subscription up to the cap.

### **Additional Flexibility**

Vitesse's Application for Reconsideration included a proposal to request a higher cap if customer demand exceeds the limits before the UM 2163 investigation is complete (along the lines of what has occurred in the New Load Direct Access program). In developing recommendations on limits, Staff weighed the merits of a lower cap with a process to request expansion against a higher cap with a firmer limit. Staff believes that certainty is more valuable than flexibility for customers considering their renewable options. Staff also favors the simplicity of a hard cap over the additional process and complexity of reviewing requests for expansion under a soft cap. Finally, Staff finds that a hard cap will keep stakeholders on track in the UM 2163 investigation and in the development of a VRET or other renewable options for PacifiCorp customers. Therefore, Staff concluded that more certainty in the limits on the size of the program is preferable to an initially lower, but uncertain, cap. Staff believes that the proposed 175 MWa, with the notification and review process proposed, strikes a reasonable balance between customer participation and protecting non-participating customers.

If the Commission is inclined to consider a soft cap, additional program changes should be adopted in the interim. First, the Commission should adopt a lower initial cap. Staff views the size of the cap and the firmness of the cap as connected toggles in this decision. Staff finds that its proposal of 175 MWa, not including Pryor Mountain, provides a more than reasonable runway to meet demand in the near-term. The trade-offs that allow Staff to be comfortable with a continued use of Schedule 272 in this way, at this scale, are no longer in balance when the hard cap is removed. One way to achieve better balance with a soft cap is to include Pryor Mountain under the cap as the Commission contemplated in its UE 374 Order. Given the concerns about cost and risk shifting to non-participating customers, and impacts to the competitive market, this would ensure that the size of the program is carefully considered, even if ultimately permitted to go beyond 175 MWa in the interim period.

Second, additional customer protections should be adopted. For contracts that would exceed the initial cap determined by the Commission, review of the individually negotiated agreements and PPA should be required prior to PacifiCorp's execution of a contract to acquire the PPA resource. When a waiver is required, PacifiCorp should be required to file an application at least 90 days prior to anticipated contract execution for the PPA-based resource, and following execution of the contract with the customer. Such a filing should:

- Describe the resource(s) anticipated to be acquired including location, size, anticipated REC/MWh production, generation profile, capacity factor, and expected online dates.
- Set forth analysis supporting the cost and benefits of the resource(s) to non-participating customers, the anticipated contracted REC price and supporting analysis, and a description of administrative costs and how those are recovered from the contracting customer.
- Address the concerns articulated by the Commission in Order No. 21-090, which include:
  - Analysis and discussion relating to IRP/RFP processes and the contract;
  - Market price, resource performance, and declining cost curve risk factor mitigation;
  - Direct access market implications; and
  - Program participant protections.
- Further, a proposal for regulatory accounting to track the costs and ensure COS customer protections may be warranted

This information will ensure that Staff, stakeholders and Commissions have the information necessary to address concerns related to risk and cost-shifting to non-participating COS customers before additional participation is allowed. Staff reiterates that this complexity and uncertainty may not be the best path forward.

### Conclusion

Staff recommends that the Commission adopt the following changes and limitations on Schedule 272 until the conclusion of Staff's investigation into 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 hard cap on individually negotiated Schedule 272 agreements where PacifiCorp has acquired or plans to acquire the underlying PPA-based resource.
  - Calculated with resources situs-assigned to Oregon;
  - 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 – “hard cap”; and
  - Exception for qualifying facilities that the Company is compelled to purchase under the PURPA framework.

- Additional review 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 full subscription up to the cap on its load/resource balance.

### **PROPOSED COMMISSION MOTION:**

Direct PacifiCorp to file an updated Schedule 272 inclusive of the following changes:

- No new individually negotiated Schedule 272 agreements where PacifiCorp has acquired or plans to acquire the underlying resource on an ownership-basis.
- 175 MWa hard cap on individually negotiated Schedule 272 agreements where PacifiCorp has acquired or plans to acquire the underlying PPA-based resource.
  - Calculated with resources situs-assigned to Oregon;
  - 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 – “hard cap”; and
  - Exception for qualifying facilities that the Company is compelled to purchase under the PURPA framework.
- Additional review 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.
  - Within 30 days of PPA execution, PacifiCorp will file a notice of contract execution (Notice) in UM 2163.
  - The Notice will include:
    - A description of the resources acquired including location, size, anticipated REC/MWh production, and expected online dates;
    - Analysis supporting the cost and benefits of the resources to all customers;
    - The REC price and supporting analysis; and
    - Description of administrative costs and how those are recovered.
  - Within 30 days of filing the Notice, PacifiCorp will host a workshop to address questions and comments from staff and stakeholders. Alternatively, this

- workshop could be set up as a special public meeting or commissioner workshop to allow for commissioner engagement.
- No additional action is necessary in UM 2163 (i.e., no written comments, no staff report, no commission decision). However, Staff and other parties may file comments to the notice in UM 2163 and PacifiCorp will answer discovery requests from Staff and other parties outside of the TAM and PCAM as they pertain to Schedule 272 resources.
  - All PPAs will be subject to prudence review as part of an appropriate rate recovery proceeding.
  - Sensitivity analysis in its future IRPs which considers the impact of full participation up to the cap.