ORDER NO. 21-090

ENTERED Mar 29 2021

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 374

In the Matter of PACIFICORP, dba PACIFIC POWER, Request for a General Rate Revision.	ORDER

DISPOSITION: MOTIONS FOR RECONSIDERATION OR CLARIFICATION GRANTED IN PART AND DENIED IN PART

In this order, we grant in part and deny in part PacifiCorp, dba Pacific Power's motion for reconsideration and clarification and grant in part and deny in part Vitesse, LLC's motion for reconsideration and clarification.

I. INTRODUCTION

On December 18, 2020, we issued Order No. 20-473, addressing PacifiCorp's request for a general rate revision. On January 29, 2021, PacifiCorp filed a motion seeking reconsideration or clarification of the Commission's directives regarding Schedule 272 and cost recovery related to the meters replaced under the company's advanced metering infrastructure (AMI) project, both addressed in Order No. 20-473. On February 11, 2021, Staff filed a response to PacifiCorp's motion, supporting clarification of certain issues related to Schedule 272, but not addressing the requests for reconsideration. On February 12, 2021, Vitesse filed a motion for clarification and reconsideration regarding the Commission's directives relative to Schedule 272. On February 16, 2021, Calpine Energy Solutions, LLC (Calpine) filed a response to PacifiCorp's motion opposing its request for reconsideration and clarification regarding Schedule 272. Also on February 16, 2021, Oregon Citizens' Utility Board (CUB) and the Alliance of Western Energy Consumers (AWEC) filed responses opposing PacifiCorp's motion relative to the replaced meters. On February 26, 2021, Calpine filed a response to Vitesse's motion, recommending against reconsideration or clarification.

II. APPLICABLE LAW

OAR 860-001-0720(3) provides that the Commission may grant an application for reconsideration or rehearing if the applicant shows that there is:

(a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;

(b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;

(c) An error of law or fact in the order that is essential to the decision; or

(d) Good cause for further examination of an issue essential to the decision.

Additionally, the Commission has stated that to support a request for clarification, a party must cite to provisions in an order that are fatally vague or ambiguous and propose changes that correct those deficiencies.[1] A request for clarification may not seek to change the result of the order.

III. ADVANCED METERING INFRASTRUCTURE

A. Background

PacifiCorp replaced approximately 627,000 customer meters with AMI meters, and installed AMI-related technology and telecommunications infrastructure between 2017 and 2020 under its AMI project.[2] In Order No. 20-473, we included $7.7 million in customer benefits in rates associated with the AMI project, but determined that because the meters replaced during the company's AMI roll out were no longer in service to customers, the costs of those should no longer be included in rates. We adopted AWEC's proposal to remove $16,126,628 associated with the undepreciated balance of the company's old meters from rate base.[3]

We, however, found the retirement of the meters replaced as part of the AMI project to be in the public interest under ORS 757.140 and determined that the company should be able to recover the undepreciated balance through a regulatory asset, with interest at the time value of money. We adopted AWEC's proposal to amortize the undepreciated

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[1] *In the Matters of Judy Bedsole and Fish Mill Lodges Water System, Application for Abandonment of Utility and Other Above-Referenced Dockets Relating to the Operation and Maintenance of the Fish Mill Lodges Water System*, Docket Nos. UM 1489, UM 1528, UCR 121, UCR 122, UCR 123, UCR 133, UCR 135, Order No. 16-075 (Feb 29, 2016).
[2] PAC/1100, Lucas/23.
[3] AWEC/307.

balance over ten years, and determined that a blended rate, based on the company's authorized cost of debt and the rate of a recent debt issuance, as reasonably reflecting the time value of money for the ten-year amortization.

B. Positions of the Parties

PacifiCorp argues that the Commission should reconsider its decision to remove the replaced meters from rate base because the company's group meter account remains used and useful to customers. PacifiCorp asserts that in other contexts it is common to replace subsets of a group account without the need to remove the replaced item from rate base. As an example, PacifiCorp explains that where the group depreciation account is defined as the generating plant, removing a subsidiary piece of equipment does not impact whether the plant as a whole remains used and useful and that the depreciation group is closed and balances are removed from rate base only when the plant retires. The company contends that the collective asset of the company's meter depreciation group remains used and useful to serve customers, consistent with a collective generating plant asset remaining used and useful when a turbine is replaced. PacifiCorp argues that it includes all meters in its Oregon service territory in a single group depreciation account, similar to other classes of distribution assets that are too numerous to track individually. PacifiCorp contends that the rate of replacement of meters is not determinative of their usefulness and there is no logical basis for distinguishing the replacement of a small subset of meters from the replacement of a larger subset of meters. PacifiCorp argues that the natural extension of the Commission's decision would require the company to track the depreciable life and usefulness of each subsidiary asset in all of PacifiCorp's distribution group accounts.

AWEC and CUB oppose reconsideration and contend PacifiCorp's argument that the removal of retired meters is inconsistent with principles of group depreciation was fully litigated and decided by the Commission in this proceeding. CUB maintains group depreciation accounting is a useful ratemaking tool when dealing with assets that are numerous and gradually replaced over time. AWEC and CUB contend, however, that distinguishing the replacement of 85 percent of existing meters is grounded in substantial reason. AWEC contends that PacifiCorp's AMI project represents the only example of a time when the company implemented a statewide replacement of assets within a single depreciation group.

AWEC asserts that the critical distinction between the removal of retired meters and a turbine replacement in a generating plant is that the generating plant itself remains used and useful. AWEC maintains here that the company did not just upgrade or replace a component of a larger asset, but instead retired most of its metering infrastructure in Oregon and replaced it with an entirely new technology in order to provide service to

PacifiCorp's customers in a new way. AWEC contends that the repowering of PacifiCorp's wind fleet is a better comparison than a turbine replacement because the replacement of the vast majority of the components of its wind resources, in effect, created new wind resources.

CUB asserts that the circumstances of the retired meters are strikingly similar to the stranded costs from the closure of Portland General Electric Company's Trojan Nuclear Plant. CUB argues that because PacifiCorp's analog meters were retired in the public interest before the end of their useful life, their cost is barred from recovery in rate base under ORS 757.355, consistent with the Trojan case. CUB maintains that the Commission's decision enables PacifiCorp to earn a return on its AMI investment, representing a new capital profit stream for shareholders, while protecting customers from continuing to pay a profit stream for the retired meters that are no longer serving them. AWEC disputes the suggestion that this treatment of replaced meters will disincentivize similar investments in the future and notes that the order authorized the inclusion of approximately $112 million in plant associated with AMI in rate base. AWEC asserts that utilities continue to have an inherent incentive to make these types of investments.

PacifiCorp argues that not recognizing the unity of a single group depreciation account for meters is inconsistent with the Commission's determination in Order No. 20-473 regarding group depreciation accounting relative to Jim Bridger's selective catalytic reduction systems. AWEC argues that PacifiCorp does not explain this perceived inconsistency, and AWEC asserts that the order does not represent a major policy change regarding group depreciation accounting but limits its treatment of replaced meters to these unique circumstances. CUB also notes that PacifiCorp stipulated to similar treatment for the replacement of wind repowering equipment, which is typically subject to group depreciation treatment. CUB argues that the stipulated effect of the ratemaking treatment in the repowering cases demonstrates flexibility regarding the interplay of ORS 757.355, ORS 757.140(2)(b), and group depreciation.

PacifiCorp asserts that AWEC's adjustment fails the substantial evidence standard because it is an approximation, calculated by applying a straight-line depreciation rate over the total estimated replaced meter balance. PacifiCorp argues that calculating the precise undepreciated balance is impossible and maintains that this illustrates the incompatibility of this adjustment with actual group depreciation accounting. PacifiCorp argues that to identify the actual undepreciated balance, the company would need to examine each of the replaced meters to determine what share of the meter was fully depreciated, and apply a retirement pattern curve to the historical balance of each asset to identify how that asset was actually depreciated over time through the group depreciation rate. AWEC argues that the amount the Commission removed is supported by the record,

and asserts the amount attributable to retired meters was calculated by AWEC and confirmed by Staff. AWEC asserts that PacifiCorp had the opportunity to identify an alternative amount in both its rebuttal and surrebuttal testimony but did not do so.

If the Commission does not grant PacifiCorp's motion for reconsideration, PacifiCorp argues that the Commission should clarify how this treatment applies to both other group accounts where multiple assets are replaced or upgraded in a short period of time. Specifically, PacifiCorp argues that the Commission should clarify the threshold for removing replaced components of a group depreciation account from rate base. As an example, PacifiCorp maintains that it is not clear whether the company would be expected to pull estimated or actual costs out of rate base to reflect the replacement of a significant number of poles burned in a wildfire. The company contends that some clarifying guidance is needed to ensure compliance, particularly in light of ongoing efforts to upgrade and harden the company's distribution system.

AWEC disputes the need for clarification and contends that the company's reading of the order substantially expands its impact beyond the circumstance applicable to this case and limited similar circumstances. CUB agrees that clarification is unnecessary because the Commission's decision applied the Trojan precedent to a substantially similar fact pattern here. AWEC contends that the AMI project represents the only time PacifiCorp has ever effectuated a statewide replacement of assets within a single depreciation group in Oregon.[4] AWEC asserts that the Commission's decision applies to limited circumstances in which a wholesale retirement or replacement of a group of assets is effectuated to achieve a new economic or service objective. As a result, AWEC argues there is no basis for PacifiCorp to conclude that this decision will require substantial changes to, or conflicts with, accepted group depreciation practices going forward. AWEC argues that the unique circumstances of PacifiCorp's meter replacement are unlikely to recur with much frequency, and thus clarification is unnecessary because PacifiCorp faces little incremental risk of noncompliance.

AWEC and CUB recommend against establishing a threshold, arguing that it would be difficult to apply in other circumstances, given the wide range of investor-owned utilities regulated by the Commission. CUB asserts that issues related to asset retirement in the public interest should be examined on a case-by-case basis. AWEC contends that any clarification should be limited to explaining that the precedential impact would apply to a substantial replacement of assets within a group that occurs close together and is for the purpose of achieving an economic or new service objective. AWEC contends that PacifiCorp's examples of a turbine replacement or the replacement of numerous distribution poles following a fire would not require removing the replaced assets from

[4] AWEC/500, Kaufman/15; PAC/4400, McCoy/14.

rate base. AWEC asserts that this is because in those instances, the company is simply ensuring its ability to continue performing its service obligations, rather than fundamentally modifying how it provides that service or investing in a new technology for the purpose of providing that service more economically.

PacifiCorp also seeks clarification regarding the application of this treatment to the ongoing replacement of mechanical meters. PacifiCorp asserts that contrary to the Commission's apparent understanding, PacifiCorp is continuing to replace mechanical meters with AMI meters. PacifiCorp requests that the Commission clarify whether the company is obligated to account for all future replaced mechanical meters separately or if the Commission's finding was limited to the replacement of meters between 2017 and 2020. AWEC characterizes PacifiCorp's concern about ongoing AMI replacements as a red herring, and notes that the company testified that "implementation of the Oregon AMI project [is] complete * * *."[5] AWEC contends that even if certain mechanical meters will be replaced with AMI in the future, there would be no need to account for such meters separately, and the net plant value associated with these meters would likely be *de minimis*. AWEC maintains that the adjustment to remove replaced meters from rate base did not establish a requirement for PacifiCorp to account individually for meters or to adjust for meters that are retired after the rate-effective date.

Finally, PacifiCorp argues that the Commission should reconsider the amortization period and interest rate to apply to any undepreciated amounts removed from rate base. PacifiCorp maintains that the Commission erred by failing to maximize cost recovery while avoiding rate shock, in order to balance customer and utility interests, consistent with Commission precedent. The company contends that the Commission accepted AWEC's ten-year proposal without discussion, and that a shorter amortization period or higher interest rate, or both, would better serve the interests of fairness and would be offset fully by the benefits of AMI replacement. Here, the company contends that accelerated amortization is particularly appropriate because of the $7.7 million in cost savings associated with AMI installation. PacifiCorp asserts that the Commission should accelerate amortization to a three- or five-year period because there is no risk of rate shock, and because the benefits of replacing the meters with AMI more than offset the amortization costs. The company argues that if the Commission declines to accelerate the amortization period, then the Commission should apply interest at the company's cost of long-term debt (4.77 percent). PacifiCorp asserts that this more appropriately reflects the time value of money over a ten-year period. PacifiCorp maintains that the time value of money formula used for the four-year amortization in Deer Creek should not be applied to a ten-year amortization.

[5] AWEC Response at 7, *quoting* PAC/1100, Lucas/23.

AWEC argues that PacifiCorp attempts to re-litigate the combined interest rate and amortization period and does not appear to claim any specific legal deficiency with the order in this regard. CUB argues that the Commission's decision to set the interest rate at 3.737 percent is supported by substantial reason. In response to PacifiCorp's contention that the Commission disregarded the company's testimony on this point, AWEC asserts that the substantial evidence standard does not require the Commission "to discuss every reason, issue or bit of evidence produced in the hearing."[6] AWEC contends that the Commission's establishment of the interest rate and amortization period were based on long-standing precedent. Specifically, AWEC argues that the interest rate is well supported by record evidence and the methodology is consistent with past practice. CUB asserts that an interest rate at the company's cost of long-term debt is inconsistent with prior Commission direction that the "[t]ime value of money recognizes the basic economic truth that a dollar today is worth more than a dollar tomorrow due to its potential earning capacity."[7] CUB explains that the long-term embedded cost of debt includes debt that was incurred quite long ago, and therefore, is not reflective of the time value of money of today, but that the blended rate adopted here is based on more real-time figures. AWEC disputes that the decision here conflicts with that in Deer Creek, but contends that even if it did, the Commission is not bound by that decision and is free to modify its reasoning if supported by the law and evidence.

C. Discussion

We find that PacifiCorp has not demonstrated an error of law or fact or other good cause that would warrant reconsideration of our decision to remove $16,126,628 associated with the undepreciated balance of the company's old meters from rate base. We, however, clarify certain points of our decision and make one change on reconsideration. In Order No. 20-473, we found the circumstances of replacing 85 percent of the company's meters within a comprehensive meter replacement program to be distinguishable from the gradual replacement and retirement of units over time. In particular, we noted that because the company was seeking to include all of the new meters installed under its Oregon AMI project in rate base, it was appropriate to remove the undepreciated balance of the replaced meters in establishing rates.

On reconsideration, PacifiCorp presents the same arguments raised during the proceeding regarding group depreciation. As CUB explains, group depreciation is a useful ratemaking tool for assets that are numerous and gradually replaced over time. As

[6] AWEC Response at 8, *quoting Publishers Paper Co. v. Davis*, 28 Or App 189, 200 (1977).
[7] CUB Response at 7, *quoting In the Matters of The Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement, Revised Tariffs Schedules for Electric Service in Oregon Filed by Portland General Electric Company, Portland General Electric Company's Application for an Accounting Order and for Order Approving Tariff Sheets Implementing Rate Reduction*, Docket Nos. DR 10, UE 88, UM 989, Order No. 08-487 at 68 (Sep 30, 2008).

AWEC and CUB note the Oregon AMI project represents narrow circumstances, under which the majority of units were replaced in a comprehensive and continuous upgrade effort over the course of three years. This large-scale replacement was not related to the end-of-life of the units, but rather due to an upgrade to a new technology at a time and in a manner that the company elected, and that the company described as occurring within a specific timeframe. Specifically, while PacifiCorp now suggests that the Commission erroneously understood the AMI meter replacements to be completed, our understanding of the status of the company's AMI replacement was based on PacifiCorp's testimony that the "Oregon AMI Project began in 2017 and was completed in early 2020."[8] Further, it is notable that this is the only time the company has implemented a statewide replacement of assets within a single depreciation group.[9] Because our decision here was based on the unique facts of the Oregon AMI project, we decline to establish a bright line threshold and will continue to assess these situations on a case-by-case basis.

Additionally, we disagree with PacifiCorp's argument that this decision will require the company to track the depreciable life and usefulness of each subsidiary asset in all of PacifiCorp's distribution group accounts. Our decision should not be read to affect the ongoing use of group depreciation generally, nor in particular, the ongoing, gradual replacement of meters not replaced as part of the Oregon AMI project. Rather, our decision should be understood to address the unique circumstances of that project.[10] While we made a one-time adjustment to account for those replaced meters at the time the new AMI meters were included in rate base, we did not establish any prospective requirements to account for meter replacements, nor to adjust for any individual retirements after the rate-effective date. In this specific instance, we found that an adjustment was appropriate ratemaking policy and a reasonable application of the law, given the magnitude and near-total nature of the replacement of the meters. We did not find, in Order No. 20-473, that group depreciation under more standard circumstances is incompatible with a reasonable implementation of the statutory directive that we not allow rates to include assets that are no longer providing utility service. Therefore, we did not order any other adjustments in the docket nor on a prospective basis.

PacifiCorp argues that the adjustment for the undepreciated book value of retired meters of $16,126,628 is an estimate, and thus, not supported by substantial evidence. In establishing rates, we do not require precise calculations of actual costs, but instead use a

[8] PAC/1100, Lucas/23.
[9] AWEC/500, Kaufman/15; AWEC/501, Kaufman/30 (PacifiCorp Response to AWEC DR 147) ("Other than AMI, the [c]ompany has not performed any state-wide replacements of assets in a single depreciation group in the state of Oregon.").
[10] PacifiCorp, CUB, and AWEC offer various examples for us to consider (e.g., distribution upgrades, replacement of poles damaged by a natural disaster, repowering wind facilities). We will not treat any of these hypotheticals in detail here, but note that it is difficult to see how any of them would be likely to involve the elective replacement of nearly all units that occurred with the Oregon AMI project.

forecast of a utility's revenue needs to set just and reasonable rates.[11] PacifiCorp does not address why a calculation by individual meter would be required, and, elsewhere in its motion, contends that a precise calculation would be impossible.[12] Here, AWEC submitted into the record a calculated estimate of the undepreciated book value of the replaced meters.[13] PacifiCorp did not dispute the accuracy of the calculation or object to the use of an estimate during the course of this proceeding.

PacifiCorp asserts that the Commission should have considered offsetting benefits of the Oregon AMI project and adopted a shorter amortization to maximize cost recovery while minimizing rate shock. While PacifiCorp proposes an amortization period of three or five years for the first time on reconsideration, we find good cause to grant PacifiCorp's motion with respect to the amortization period. We acknowledge that we did not consider that the $7.7 million in annual benefits of the AMI project would allow for the $16,126,628 to be amortized over a shorter period without risk of rate shock. On reconsideration, we determine that a shorter amortization period is in the public interest, and that a five-year amortization period appropriately balances the interests of the company with those of ratepayers. We continue to find that a blended rate based on the company's cost of debt and a recent issuance of debt reasonably reflects the time value of money and decline to reconsider the applicable interest rate.

IV. SCHEDULE 272

A. Background

Under Schedule 272, PacifiCorp provides an option that allows qualifying customers to have PacifiCorp purchase renewable energy certificates (RECs) from specified renewable resources on behalf of those customers. In Order No. 20-473, we agreed with Staff that the acquisition of the Pryor Mountain wind resource (Pryor Mountain) to provide RECs under Schedule 272 to a single customer raised new questions regarding the appropriate use of Schedule 272. We noted that in adopting Staff's recommendation to approve Schedule 272, we relied on a finding that Schedule 272 was not a voluntary renewable energy tariff (VRET), based on the understanding that the RECs sold would be unbundled and that specific resources would not be built to meet specific customer preferences.[14] We recognized concerns regarding transparency into procurement and the allocation of costs, risks, and benefits between non-participating cost-of-service customers and Schedule 272 customers and determined that Staff may conduct a review

[11] Order No. 08-487 at 7.
[12] PacifiCorp Motion at 15 ("the impossibility of calculating the precise undepreciated amount highlights the incompatibility of the adjustment with actual group depreciation accounting.").
[13] AWEC/307.
[14] *In the Matter of PacifiCorp, dba Pacific Power, Advice No. 16-012 (ADV 386), Changes to Schedule 272*, Docket No. UE 318, Order No. 17-051, Appendix A at 7 (Feb 13, 2017).

of Schedule 272 either alone or in combination with other pending or planned customer choice investigations. Pending that investigation and recognizing the demand for access to large-scale green products from both customers and communities, we adopted limits to the use of Schedule 272, including a 175 aMW cap, pending Staff's review.

B. Positions of the Parties

PacifiCorp argues that application of the 175 aMW cap is not supported by substantial evidence and contends that applying a VRET guideline to Schedule 272 pending investigation improperly prejudges that Schedule 272 is a VRET. PacifiCorp contends that the possibility of a cap was not raised, and thus it had no opportunity to address applicability of a cap to Schedule 272. Vitesse argues that no party proposed restricting the use of Schedule 272 in conjunction with power purchase agreements (PPAs). Calpine argues the Commission properly limited the future use of Schedule 272 based upon its finding that PacifiCorp's use of the tariff contradicted the expectation of how the tariff would be used when approved. Calpine maintains that, given PacifiCorp's unilateral change in the use of the tariff without prior Commission approval, the Commission could have taken a much more drastic step than adopting a narrowly targeted and limited restriction on PacifiCorp's use of Schedule 272. Calpine contends that PacifiCorp misconstrues the order, which imposes a cap only for acquisition of new generation resources to supply RECs to Schedule 272 customers, but allows PacifiCorp to continue its use of Schedule 272 without a cap for RECs from facilities that were not acquired to meet a specific customer's request. Calpine argues that absent these limitations, the Commission would be unable to correct any harm that might occur during the investigation.

Vitesse and PacifiCorp assert that, depending on how the cap is applied, existing Schedule 272 sales could use up most or all of the program capacity, leaving no options for PacifiCorp customers now looking to purchase RECs. Vitesse argues that Schedule 272 is the only practical renewable power purchase option that meets its sustainability goals in Oregon and urges the Commission to ensure a path forward that meets the Commission's goals of protecting other cost-of-service customers, but does not impede Vitesse's ability to meet its sustainability objectives. Vitesse contends that because of the potential for this order to prevent access for large cost-of-service customers to renewable energy products for an extended period, the Commission has good cause to further examine and reconsider the effect of the 175 aMW cap. PacifiCorp points out that because PacifiCorp does not have a VRET program, the company has not sought an increase in its VRET cap, as PGE is doing in docket UM 1953.

PacifiCorp argues that if the Commission retains the cap, the Commission should clarify its application to ensure that PacifiCorp and its customers understand what transactions

remain permissible pending investigation. Vitesse asserts that Order No. 20-473 is incomplete because it does not clearly explain how to calculate the cap and to which projects the cap applies. PacifiCorp requests confirmation that the cap does not apply to pre-existing REC sales, transactions where no underlying resource is specified, transactions when PacifiCorp does not procure the underlying resource through a new PPA, or RECs associated with mandatory qualifying facilities purchases under Public Utility Regulatory Policies Act. The parties also dispute whether the cap applies to Oregon's allocated share of the underlying resource, or the participating load equivalent.

Vitesse argues that Order No. 20-473 is unclear because the cap states that it applies to prospective Schedule 272 "PPA-based-resources" from the date of the order, but also appears to apply to Pryor Mountain, even though the project is not a new PPA and would take up a significant portion of that cap. Vitesse, PacifiCorp, Staff, and Calpine offer differing interpretations of the application of the cap relative to PPA-based resources and Pryor Mountain. Vitesse argues that if the Commission intended to adopt a 175 aMW total resource cap further reduced by Pryor Mountain, the Commission should reconsider this directive and implement an alternative that would allow Vitesse and other cost-of-service customers to use Schedule 272 until the investigation is complete or until a new VRET option is available. Vitesse proposes options that include delaying implementation of the cap until 2022, or until PacifiCorp has an available VRET or excluding the average output of Pryor Mountain in the cap. Additionally, Vitesse and PacifiCorp request clarification of the applicable standard and process in the event that the cap is reached and PacifiCorp seeks to obtain new PPA-based resources to meet Schedule 272 needs.

PacifiCorp requests that the Commission clarify the scope and timing of the investigation into Schedule 272 to ensure the regulatory certainty necessary for the tariff to continue to function. Additionally, PacifiCorp proposes delaying the investigation until 2022 to allow the company time to develop and file a separate VRET program, which could then be evaluated alongside Schedule 272. Staff takes no position on these issues. Calpine argues that the Commission need not resolve these procedural issues here, and that they may be addressed at the commencement of the Schedule 272 investigation. PacifiCorp also requests that the Commission clarify any interim changes it intends to make to Schedule 272, rather than consider further changes in the public meeting process. The company argues that allowing continued revision of Schedule 272 would essentially preclude use of the tariff, by leaving parties without a clear understanding of the tariff's guidelines and thus unable to negotiate. PacifiCorp represents that it is currently negotiating with multiple customers, and that the availability of voluntary renewable program options is an increasingly important consideration for economic development, where communities without these options are less competitive for attracting new investment and local jobs.

Finally, PacifiCorp argues that the Commission should clarify its intent in cautioning the company against procuring new utility-owned resources to supply specified unbundled RECs to customers and considering Schedule 272 an appropriate mechanism to provide community-wide green tariffs. Specifically, PacifiCorp requests clarification of whether the Commission intended to impose new restrictions on Schedule 272 or was directing the company to consider customer interests more closely in these contexts. Calpine argues that given PacifiCorp's unexpected use of Schedule 272, the Commission was within its authority to clarify that the authorized use of the tariff is limited. Calpine contends that the upcoming investigation will provide PacifiCorp with the opportunity to justify a more expansive use of Schedule 272.

C. Discussion

The Commission may grant an application for reconsideration if there is new evidence which was previously unavailable, a change in law or policy since the original order was issued, an error of law or fact that was essential to the decision, or for other "good cause." Here, as addressed below, we find good cause to clarify and reconsider in part our directives related to Schedule 272.

In our order, we expressed concerns regarding the active procurement of specific resources for the purpose of supplying RECs for Schedule 272 customers. In our view, PacifiCorp's acquisition of Pryor Mountain for Schedule 272 purposes exceeds the use that the Commission anticipated for Schedule 272 at the time of the tariff's approval.[15] In Order No. 20-473, we provided for Staff review of Schedule 272 either alone or with other customer choice investigations.

We now clarify that the recent use of Schedule 272 demonstrates that a reevaluation of Schedule 272 is warranted to ensure that its continued use is consistent with the public interest. To reiterate our concerns, the procurement of Pryor Mountain, a Montana wind farm, avoided the portfolio analysis and scrutiny applied to the EV 2020 projects that PacifiCorp pursued through the IRP and RFP process, yet introduced a resource to long-term rates for cost-of-service customers that would warrant the same scrutiny and review. Specifically, there is a risk that cost-of-service customers will not ultimately realize economic benefits over the long term. If market prices are lower, the wind project under-performs, or lower cost zero-carbon resources are available when there is a demonstrated need for the capacity, cost-of-service customers bear the risk of higher costs. Additionally, unlike the EV 2020 projects, the customers facing the long-term uncertainty for the value of the resource do not receive the RECs, essentially buying, as CUB

[15] Order No. 17-051, Appendix A at 7.

testified, a "brown resource with a variable load shape."[16] It is unclear from the record in this case that this unexamined risk is appropriately allocated between cost-of-service customers and customers of Schedule 272.

Additionally, parties have extensively engaged on VRET program design, risk allocation and mitigation, and direct access market protection in other dockets. We note that some parties deeply engaged in the VRET processes, representing the concerns of large customers or of direct access providers, were not parties to this rate case. Questions such as safeguards for cost-of-service customers if utilities were to own VRET resources and sought to earn a rate of return on those investments have been extensively testified to in those dockets. We are concerned it is not a fair or consistent regulatory approach to hold utilities that proactively bring a VRET design to the Commission for examination to the VRET conditions while not examining whether Schedule 272, used in an arguably similar manner, should be held to the same conditions.

In addition to the concerns set forth in our prior order regarding the adequacy of protections for non-participating cost-of-service customers and fairness to those who have relied on our VRET conditions to provide utility-offered customer choice programs, we also recognize the potential need for protections for participating customers. We are aware of the significant demand for a community-wide green tariff program, and we are mindful that the scale of purchasing under such a future program may require protections for both cost-of-service customers and for green tariff customers not provided within Schedule 272. Consumer protection within customer choice products has been a priority for us since green power programs were initially developed. We are interested in ensuring that community-wide green tariff programs clearly articulate the green benefits, costs and risks participating customers undertake. While we expect PacifiCorp to engage thoroughly in the development of the community-wide green tariff program, we also see a need to evaluate within our Schedule 272 investigation what potential uses of Schedule 272 are in the public interest and whether it lacks needed protections for those uses.

We therefore open an investigation into Schedule 272. We expect the investigation into Schedule 272 to determine, as a threshold matter, whether PacifiCorp's use of this tariff to add a resource to its portfolio for the express purpose of delivering the RECs from that specific resource to a participating customer or customers is in the public interest. Recognizing that a VRET includes restrictions on the use of utility-owned resources, we determine that it is necessary to evaluate whether Schedule 272 remains in the public interest if it is determined that use of Schedule 272 does overlap with a VRET. Additionally, if requested by the parties, we are open to separately considering whether

[16] CUB/100, Jenks/53.

PacifiCorp's current practice should be evaluated and approved as a VRET within the investigation.

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.

V. ORDER

IT IS ORDERED that:

1. PacifiCorp, dba Pacific Power's motion for reconsideration or clarification is granted in part and denied in part.

2. Vitesse, LLC's motion for reconsideration or clarification is granted in part and denied in part.

3. An investigation is opened into Schedule 272.

4. Staff shall bring proposed revisions to Schedule 272 to implement appropriate limitations pending investigation to a public meeting within 45 days.

Made, entered, and effective Mar 29 2021.

Megan W. Decker
Chair

Letha Tawney
Commissioner

Mark R. Thompson
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.