

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1610

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Investigation into Qualifying Facility  
Contracting and Pricing.

ORDER

DISPOSITION: MOTION TO CLOSE DOCKET DENIED; PARTIES  
DIRECTED TO BRIEF THREE OPTIONS

**I. SUMMARY**

We deny PacifiCorp, dba Pacific Power's motion to close this docket, but narrow the scope of future inquiry.

**II. BACKGROUND**

In Phase I of this docket, we addressed the question of whether avoided cost prices offered in standard contracts should include the costs or benefits associated with third-party transmission to move the output of a qualifying facility (QF) in excess of local load from a load pocket to another load area on a utility's system.<sup>1</sup> Answering in the affirmative, we concluded that any costs imposed on a utility by a QF in excess of avoided costs must be assigned to the QF in order to comport with PURPA's avoided cost principles.<sup>2</sup> However, we also determined that Staff and the other parties had not sufficiently addressed *how* to calculate and assign the third-party transmission costs attributable to a QF and deferred analysis of these questions to Phase II of these proceedings. Although progress was made towards resolution of the questions in Phase II, some parties requested more time to continue addressing the questions and we directed Staff and the utilities to work with the other parties towards informal resolution.<sup>3</sup> After several months of discussion, a formal procedural schedule to address this question was established.<sup>4</sup>

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<sup>1</sup> PacifiCorp first raised the load pocket issue in docket UE 235, where it asked for our approval to require a QF to pay for third-party transmission if the company deemed it necessary. We closed docket UE 235 without an order and moved the underlying questions to docket UM 1610.

<sup>2</sup> Order No. 14-058 at 22.

<sup>3</sup> Order No. 16-429.

<sup>4</sup> Law Judge Conference Report (Nov 14, 2016).

On March 15, 2017, PacifiCorp filed a motion requesting that we close the docket or, alternatively, direct parties to submit legal briefing on the appropriate scope of the proceeding. On March 30, 2017, responses were filed by Portland General Electric Company (PGE), Idaho Power Company, Commission Staff, and jointly by the Community Renewable Energy Association (CREA) and the Renewable Energy Coalition (the Coalition).

### III. DISCUSSION

PacifiCorp contends that we should close the docket for three primary reasons: (1) the sole issue in this phase of this generic proceeding is specific to PacifiCorp; (2) the issue is uneconomic to litigate because it affects so few customers at such a great expense of time and money; and (3) the issue is rendered moot because the company promises to prospectively discontinue assigning third-party transmission costs to move QF load out of the company's load pockets. If we keep the docket open, PacifiCorp requests that we direct parties to submit legal briefing on the appropriate scope of the proceeding before we establish a new procedural schedule.

We separately summarize the parties' positions on these four matters below.

#### A. The Inquiry is Utility-Specific

PacifiCorp opposes the use of this generic proceeding to address an issue specific to PacifiCorp. The Commission, the company reminds, already rejected the use of this generic proceeding to address a utility-specific question: *e.g.*, when Staff determined that examination of the treatment of solar integration costs in utility avoided cost prices related to only one utility, we closed the generic inquiry and indicated that solar QF integration charges would be handled on an individual utility basis.<sup>5</sup>

PGE and Idaho Power agree that this docket should not be used to address a PacifiCorp-only issue.

Staff responds that too many years of effort and expenditure have been invested in the issue to close the docket now without resolution.

#### B. The Issues are Uneconomic to Address

PacifiCorp also contends that the resources required to address this issue exceed the potential need for a mechanism to allocate third-party transmission costs to QFs sited in load pockets. PacifiCorp indicates that since 2011, when the issues regarding excess QF

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<sup>5</sup> Order No. 15-292 at 2 (Sep 23, 2015).

load in a load pocket were first raised, only 4 percent (12 MW) of all of the company's QF power purchase agreements (PPAs) have been affected. PacifiCorp posits that the costs involved in dealing with the substantial volume and scope of discovery requests in this proceeding will likely surpass any additional revenue generated by third-party transmission charges eventually adopted in this docket. PacifiCorp observes that we relied on this lack of cost-effectiveness rationale to close prior dockets. In Order No. 08-261, for example, we determined that the costs of implementing stochastic power cost modeling for a utility outweighed the benefits and closed the inquiry.<sup>6</sup>

CREA and the Coalition discredit PacifiCorp's factual assertions about the economics of the issue. They point out that the costs associated with BPA's long-term firm point-to-point transmission are significant regardless of how many megawatts of QF power are affected, and they reject the idea that the litigation costs associated with this docket are greater.<sup>7</sup> CREA and the Coalition also assert that more QFs than those that signed a standard contract addendum have been, or will be affected by any continued uncertainty related to load pockets. They also remind parties that PacifiCorp previously represented that its *entire* service territory in its west balancing area involves load pockets.<sup>8</sup>

### C. The Issue is Moot

By proposing to prospectively discontinue the assignment of third-party transmission costs to QFs—even if such costs are incurred—PacifiCorp argues that it renders the sole issue in this proceeding moot. PacifiCorp represents that if the need for third-party transmission to move QF loads out of load pockets increases in the future, PacifiCorp will notify the Commission of the changed circumstances and request guidance.

PacifiCorp asserts that the concerns presented by CREA and the Coalition that the company may use alternative mechanisms such as interconnection agreements to pass on third-party transmission costs to QFs illustrate a fundamental confusion about the scope of this docket and the ramifications of closing it. PacifiCorp explains that the scope of this docket is limited to third-party transmission arrangements that the company's merchant function (Energy Supply Management or ESM) determines are necessary to transmit a QF's power from the point of interconnection to load and does not involve the QF's agreement to interconnect with the company's system. Nevertheless, to quell the

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<sup>6</sup> *In the Matter of Portland General Electric Company Report on the Feasibility of Using Stochastic Modeling in the Annual Update*, Docket No. UM 1340, Order No. 08-261 (May 19, 2008).

<sup>7</sup> CREA and Coalition Response at 18 (Mar 30, 2017). The QF parties observe that when PacifiCorp first raised the load pocket issue, it asserted that 8 MW of BPA long-term firm point-to-point transmission (needed for a particular QF project) would cost \$144,096 per year, and that the cost to add 44.8 MW of nameplate capacity for five new QF projects would cost \$810,540 per year. (citing *PacifiCorp's Advice No. 11-011 Memorandum of Law*, Docket No. UE 235 at 5-6 (filed June 27, 2011).

<sup>8</sup> *Id.* at 20, citing UM 1610 Phase I, Hearing Exhibit/1-3

concerns of the QF parties, PacifiCorp promises to discontinue identifying third-party transmission alternatives in QF interconnection request studies.

CREA and the Coalition contend that PacifiCorp has failed to show the issue is moot.<sup>9</sup> They express concern that if the docket is closed without a binding determination about third-party transmission costs, QFs will have no assurances about load pocket related costs they may face in the future. CREA and the Coalition suggest that PacifiCorp could reintroduce a proposal to directly allocate third-party transmission costs to QFs at any time or rely on other mechanisms to address such costs, such as interconnection requirements to pay for the construction of new transmission lines.

CREA and the Coalition request that we prohibit PacifiCorp from requiring a QF to pay—by *any* mechanism not specifically authorized by the Commission—for costs related to the transmission of excess QF load in a load pocket to other load.

#### **D. Alternative Recommendation**

If we keep this docket open, PacifiCorp requests that we direct parties to submit legal briefing on the appropriate scope of the proceeding before we establish a new procedural schedule.

PGE concurs, expressing concern about the attempts of CREA and the Coalition “to expand the scope of discovery beyond the issues initially anticipated by PGE and for the apparent purposes of proposing solutions that may be inconsistent with Federal Energy Regulatory Commission (FERC) Open Access Transmission Tariff (OATT) procedures and requirements and PURPA.”<sup>10</sup> No other party took a position on this alternative recommendation.

### **IV. DISCUSSION**

Given the apparent disagreement about the scope of the costs at issue in this phase of the docket, we find it necessary to clarify the issue we are addressing here. The third-party transmission costs at issue are the third-party transmission arrangements necessitated by PacifiCorp ESM’s transmission service requests to deliver QF power that is (1) excess of local load, (2) out of a load pocket, and (3) to a different area of PacifiCorp’s system. The unique load pockets in PacifiCorp’s system have raised this PURPA cost allocation issue, and this docket is limited to addressing those specific arrangements. We are not addressing QF interconnection issues, which have been thoroughly litigated and

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<sup>9</sup> CREA and the Coalition note that PacifiCorp did not seek agreement among the parties regarding its proposal to prospectively discontinue the assignment of third-party transmission costs to QFs, despite the fact that the Commission originally envisioned such agreement as the means to close this docket. (CREA and Coalition Response at 17 (Mar 30, 2017).

<sup>10</sup> Portland General Electric’s Response to Motion to Close Docket at 1-2 (Mar 30, 2017).

addressed in previous proceedings, nor are we addressing any options that may have been offered to a QF related to interconnection in the context of PacifiCorp Transmission's QF interconnection studies.<sup>11</sup>

We deny PacifiCorp's motion to close this docket. As noted above, we determined in Order No. 14-058 that third-party transmission costs not accounted for in the avoided cost price calculation "must be assigned to the QF in order to comport with PURPA avoided cost principles."<sup>12</sup> In so holding, we effectively precluded PacifiCorp's ability to prospectively discontinue assigning the third-party transmission costs that the company incurs to move QF load out of the company's load pockets. The issue we now must address is *how*—not whether—a utility should assign third-party transmission costs. Although PacifiCorp asserts that the applicability of this cost-allocation option has, in practice, been extremely limited, it nevertheless has been used at times. Thus, the removal of this cost-allocation option has the potential to unnecessarily shift costs to customers. In the event it becomes necessary to allocate these costs to QFs, we believe it is appropriate to have an approved mechanism in place to allow the utility to do so. Accordingly, the issue is not moot, and we leave this phase of the docket open to address this generic issue that could affect all utilities, even if it currently applies only to PacifiCorp.

We find it appropriate, however, to limit the scope of future proceedings. As indicated in Order No. 16-174, we believed that substantial progress had been made in Phase II with regard to answering how to calculate and assign third-party transmission costs attributable to a QF sited in a load pocket, and we directed the parties to continue working towards resolution for a period of three months. Unfortunately, consensus did not emerge and the parties undertook a more formal process that is now mired in lengthy and costly discovery disputes.

We ask the parties to reexamine their work during that earlier phase. We discern that Staff and the other parties had presented three options for the assignment of third-party transmission costs:

- PacifiCorp's initial proposal to procure long-term, firm, point-to-point third-party transmission under a transmission provider's OATT for the entire term of a QF's PPA with assignment of the associated costs by PPA addendum to be consistent with PURPA.

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<sup>11</sup> See, e.g., Dockets AR 521 and UM 1401 (modifying FERC's Large Generator Interconnection Agreement to ensure that QF interconnection comports with the Commission's customer indifference standard). We emphasize that interconnection-driven costs should be assessed and allocated in accordance with our prior orders and in accordance with any Commission-approved interconnection agreements.

<sup>12</sup> Order No. 14-058 at 22.

- Staff's modified proposal that PacifiCorp offer a QF locating in a load pocket an option to choose either a price for long-term, firm, point-to-point third-party transmission under a transmission provider's OATT for the entire PPA term or a price for long-term, firm, point-to-point third-party transmission that would reset every five years.
- CREA's endorsement of Staff's proposal, but giving the QF the additional option to avoid paying for third-party transmission by waiving its right to sell all delivered net output in order to permit limited curtailment by the utility when transmission is unavailable.

We limit the scope of our review to the first two proposals, and we direct the parties to further address them. We direct the Administrative Hearings Division to hold a prehearing conference to determine what evidentiary inquiry is still needed to develop a record for our selection from among these two identified options for the assignment of third-party transmission costs. We find that the third option is a complex option that involves significant legal and evidentiary issues, and that one that is best addressed in a separate future investigation.

#### V. ORDER

IT IS ORDERED that:

1. The motion to close this docket, filed by PacifiCorp, dba Pacific Power, is denied.
2. The scope of this phase is limited the two options identified above for the assignment of third-party transmission costs.

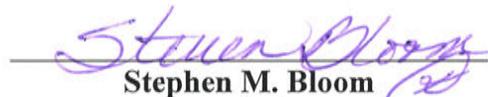
MAY 23 2018

Made, entered, and effective \_\_\_\_\_.



**Lisa D. Hardie**  
Chair





**Stephen M. Bloom**  
Commissioner



**Megan W. Decker**  
Commissioner