ORDER NO. 23-315

ENTERED Aug 24, 2023

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2283

In the Matter of

PACIFICORP, dba PACIFIC POWER

Application for Waiver of Competitive Bidding Rules for Renewable Energy Rider Optional Bulk Purchase Option Under Schedule 272.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on August 22, 2023, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:

Nolan Moser
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. RA4

PUBLIC UTILITY COMMISSION OF OREGON
REDACTED STAFF REPORT
PUBLIC MEETING DATE: August 22, 2023

REGULAR __X__ **CONSENT** ____ **EFFECTIVE DATE** ____N/A____

DATE: August 14, 2023

TO: Public Utility Commission

FROM: Madison Bolton

THROUGH: Caroline Moore and Scott Gibbens **SIGNED**

SUBJECT: PACIFIC POWER:
(Docket No. UM 2283)
Application for Waiver of Competitive Bidding Rules for Renewable Energy Rider Optional Bulk Purchase Option Under Schedule 272.

STAFF RECOMMENDATION:

The Commission should waive the competitive bidding rules 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.

DISCUSSION:

Issue

Whether the Oregon Public Utility Commission (OPUC or Commission) should find that there is good cause to waive the CBRs to allow the Company to procure renewable resources acquired to serve Vitesse with RECs.

Applicable Law

Per OAR 860-089-0100(1)(a), the Commission's CBRs generally apply when an electric utility seeks to acquire a resource or contract that is more than an aggregate of 80 megawatts and five years in duration. The CBRs require the utility to issue a Request for Proposal (RFP)[1] and to engage the services of an independent evaluator to oversee the RFP.[2]

[1] OAR 860-089-0250.
[2] OAR 860-089-0200(1).

There are four exceptions where the otherwise applicable CBR requirements do not apply: 1) there is an emergency, 2) there is a time-limited opportunity to acquire a resource of unique value to the electric company's customers, 3) an alternative acquisition method was proposed in the integrated resource plan (IRP) and acknowledged by the Commission, and 4) the utility is seeking to exclusively acquire transmission assets or rights.[3]

Upon request or its own motion, the Commission may waive any of the Division 089 rules for good cause shown. A request for waiver must be made in writing to the Commission prior to or concurrent with the initiation of resource acquisition.[4] If a request for waiver is filed by an electric company after it acquires a resource, granting the waiver request does not result in or equate to the Commission's acknowledgment of the resource acquisition.[5]

Analysis

Background
In 2021, the Commission opened an investigation into the continued use of Schedule 272 to serve customers with RECs from facilities where the Company procured the underlying power outside of a Voluntary Renewable Energy Tariff. In Docket No. UM 2163, the Commission established a, "175 average megawatt hard cap on individually negotiated Schedule 272 agreements where PacifiCorp has acquired or plans to acquire the underlying power purchase agreement based resource." To provide greater transparency in reviewing the procurement of the underlying resource in other dockets, the Commission also established detailed reporting requirements within 30 days of PPA execution, but states the following:[6]

> 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.

On May 18, 2023, PacifiCorp filed an application for waiver of CBRs applicable to the procurement of solar resources that will generate RECs to serve Vitesse, a subsidiary of Meta Platforms, Inc. (Meta), under a Schedule 272 individually negotiated agreement. The application stated that on April 25, 2023, PacifiCorp executed two power purchase agreements (PPAs) with the developer D.E. Shaw Energy, Inc. (DESRI). In compliance

[3] OAR 860-089-0100(3).
[4] OAR 860-089-0010(2).
[5] OAR 860-089-0010(2)(b).
[6] Commission Order No. 21-146.

with Commission Order No. 21-146, PacifiCorp later filed a notice of contract execution for the two PPAs in Docket No. UM 2163 on May 25, 2023.

PacifiCorp states in its waiver application that the PPAs are effective contingent upon the Commission granting the waiver. The remainder of this memo will describe the resource, the transaction, and the implications for the Schedule 272 program and HB 2021 compliance issues.

Resource Description
The PPAs are associated with the Hornshadow I (100 megawatts (MW)) and Hornshadow II (200 MW) solar facilities in Emery County, Utah. The solar resources will serve all PacifiCorp customers and the costs of the underlying energy will be allocated in line with the current MSP. PacifiCorp will sell Vitesse 100 percent of the RECs generated by both resources under a Schedule 272 individually negotiated agreement until 2030, after which 10 percent of the RECs will be retained by PacifiCorp to use on behalf of customers in the State of Washington for compliance with its Clean Energy Transformation Act.

The Hornshadow resources were vetted and initially on the shortlist of projects in PacifiCorp's 2020 All Source Request For Proposals (AS RFP). Ultimately, the resources were not contracted at that time due to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. Shortly after the 2020AS RFP, Meta expressed interest in the resources due to a time-limited need for RECs to serve its Oregon Data Center. The resources' commercial operation date (COD) of 2025 aligns with the timing of increased load at the Oregon Data Center and allows Meta to meet a 100 percent renewable energy commitment.

PacifiCorp is requesting a waiver of CBRs based on the premise that these resources are a time-limited opportunity that is of unique value to the electric company's customers.

Staff found that the Company is paying **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** per MWh for Hornshadow on a 25-year term. The benefit to customers from the sale price per REC associated with the resources provides a **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** in the delivered price. The net customer price is nearly **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

One constraint on time cited by the Company involves the resources' large generator interconnection agreements (LGIA). **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[redacted] **[END HIGHLY CONFIDENTIAL]**. If this occurs, DESRI may not be able to complete the projects on the agreed upon timeframe or adhere to the terms of the PPAs.

Additionally, DESRI has real estate agreements requiring full construction and operation of the resources by a specific date. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. DESRI also has conditional use permits for the resources, which have already been extended in the past. Further extensions would require three to four months to approve and can also be rejected if the permit is older than two years. This presents another situation that could jeopardize the project's completion should further delay occur.

Because of the myriad of time-based factors and the timeline conditions of PacifiCorp's current 2022AS RFP, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. PacifiCorp explains that it requests a waiver of the CBRs in order for the Company to procure these resources given it cannot conduct a competitive bidding process that would accommodate the projects.

Staff Analysis
Staff reviewed this waiver petition, together with the Company's responses to Staff data requests, to determine whether it is supported by good cause.

Staff's priority in reviewing procurements driven by Schedule 272 is to ensure that the allocation of costs and benefits to Schedule 272 participants (through the sale of the RECs) holds all other customers harmless. Review of the Company's supporting analysis suggests that the PPA price relative to other recent bids and the methodology that the Company used to allocate costs and benefits to Schedule 272 customers meets this hold harmless expectation.

The Company provided a description of the REC price derivation, explaining that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** were used to arrive at the price in the Hornshadow PPAs.

The difference between the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** was used as the basis for the REC price. In this way, the energy price paid for by COS customers is commensurate with the other resources procured in the 2020AS RFP.

PacifiCorp also provided an economic analysis of the system value of the Hornshadow PPAs based on two PLEXOS model runs spanning 2025–2042. The two runs depict a medium natural gas price with a medium CO2 price assumption, versus a medium natural gas price with no CO2 price assumption. The analysis demonstrates that in both scenarios, the PPAs reduce nominal revenue requirement for the majority of the contract term and resource life. Staff examined the inputs used in the model and verified the calculation of the benefit analysis for accuracy.

Staff's secondary consideration when reviewing procurements driven by Schedule 272, is that voluntary actions are high value, not just low cost. Staff encourages the Company to think creatively and work with sophisticated customers to identify voluntary actions with high system value and/or more direct emissions reductions value, such as resources with flexible capacity or products that reflect 24/7 product principles.

Staff believes it is ideal to consider broader value resources for future voluntary actions the Company brings forward. Further, Staff notes that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. Staff believes it is important to prioritize system value in future voluntary actions and looks forward to working with parties to identify these opportunities to improve voluntary products in this way.

Emerging HB 2021 Considerations
The Commission's ongoing consideration of HB 2021 implementation issues across multiple dockets raises some broader questions about the types of voluntary renewable procurements contemplated in this Schedule 272 agreement.

An open HB 2021 question directly impacting this Schedule 272 agreement is related to the treatment of RECs created at the same time as generation that is reported for HB 2021 compliance. At this time, the Commission is considering arguments related to REC treatment and its implications for other Oregon regulated REC programs in Docket No. UM 2273. If it is determined at some point in the future that a REC must be retired by the Company to report generation as non-emitting for HB 2021 compliance, and the REC cannot be retired on behalf of a specific customer, the Hornshadow individually negotiated arrangement would lock Oregon customers into a long-term PPA that will not be considered emissions free under HB 2021.

Because granting this waiver will allow the PPA contract to go into effect and subject customers to this prudence and compliance risk, it is important for the Commission to understand that, while there is a lot of uncertainty about the likelihood, PacifiCorp is taking a risk by entering into a long-term REC sale agreement at this time. Staff believes that the best outcome for Oregon customers and Vitesse is to enable this PPA and REC deal to move forward with a shared expectation that, no matter the future policy landscape, PacifiCorp and Vitesse will ensure that these RECs will be retired in a manner that allows the Oregon share of the generation to be reported as non-emitting. Without these recommended safeguards, Staff believes there is the potential for this agreement to have irreparable consequences for emissions reduction efforts in light of the outstanding REC policy issues.

Another issue surrounding REC allocation is the portion of RECs withheld for the state of Washington past 2029. Staff requested verification that the RECs allocated to Washington in 2030 would not impact the value of the resource to Oregon customers. In the Company's response to OPUC Data Request 3, PacifiCorp explains that Washington customers will pay the PPA price, inclusive of the REC price beginning in 2030, ensuring the system value to Oregon customers is not impacted.[7] Staff verified this assertion in the benefits analysis workpaper, and relies on the Company's assertion to make its recommendation in this memo.

A broader HB 2021 consideration for future procurements is how non-emitting resource opportunities are allocated between voluntary and non-voluntary actions. With a limited pool of non-emitting resources and the scale of non-emitting resource needs, it will be increasingly important to consider the role that voluntary actions should play.

Staff is interested in exploring the potential benefits of using voluntary demand to help carry the burden of HB 2021 compliance.

Waiver for Good Cause Shown
Staff believes the Company's analysis demonstrates that the Hornshadow resources do provide a financial benefit to customers in the context of the current crediting methodology, and it would be unnecessarily expensive and time consuming to run a competitive solicitation for a resource for which a Schedule 272 customer is paying the incremental costs to secure the RECs. Given Vitesse's 2025 REC need it would also

[7] PAC Response to OPUC Data Request 3.

not be feasible to conduct a competitive bidding process for a resource with this COD within the time available.

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. 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. The first, which Staff believes creates the best outcomes for Oregon customers and Vitesse among the available options, is approval of the CBR waiver with the following condition:

> If at some future point the sale of 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.

Staff prefers this condition as it proactively adds safeguards for Oregon customers while allowing the Hornshadow procurement to provide the intended benefits. This would allow parties to work collaboratively to minimize the potential negative impact of a REC policy change based on the actual circumstances of the change. PAC's product design inherently limits the Commission ability to protect customers in these arrangements before all of the contracts are executed, which is the reason that the UM 2163 requirements were adopted. Staff believes that its recommended condition is in line with the purpose of the UM 2163 notice requirements and adds customer protections before the Company takes on the risk of this PPA.
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.

Another option would be for the Commission to suspend PacifiCorp's voluntary renewable program tariffs, Schedule 272 and Schedule 273, to allow for this emerging REC issue and other voluntary product issues to be addressed in UM 2273. This option is less favorable to all entities with existing Schedule 272 agreements, but would provide time to consider any determinations from UM 2273 in relation to future procurements.

Staff is happy to engage in a discussion of these considerations at the August 22, 2023, Public Meeting.

Conclusion

Staff believes that further discussions and consideration around the role voluntary products will have in an overall HB 2021 compliance strategy are warranted. Staff notes that in the future, resources which provide additional benefits beyond low-cost energy may provide greater value from a voluntary product solicitation. However, as PacifiCorp notes, the current need for non-emitting resources is great and this project provides a benefit to all customers. Staff recommends that the Commission find that there is good cause for a waiver of the CBRs for Pacific Power's proposed renewable resource procurement with DESRI and Vitesse, with consideration for Staff's recommendations on how to address the emerging issues regarding REC valuation for voluntary products.

PROPOSED COMMISSION MOTION:

Waive the competitive bidding rules set forth in OAR Chapter 860, Division 089 for the Schedule 272 agreements recently executed by Pacific Power and Vitesse, and noticed in UM 2163.

Pacific Power UM 2283