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January 8, 2019

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3398

Attn: Filing Center

RE: UM 1610—PacifiCorp's Reply Brief

PacifiCorp d/b/a Pacific Power encloses for filing its Reply Brief in the above-referenced proceeding.

If you have questions about this filing, please contact Natasha Siores, Manager, Regulatory Affairs, at (503) 813-6583.

Sincerely,

Etta Lockey
Vice President, Regulation

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.	**PACIFICORP'S REPLY BRIEF**

January 8, 2019

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I. INTRODUCTION

PacifiCorp d/b/a Pacific Power submits this brief to the Public Utility Commission of Oregon (Commission) to reply to the opening brief filed by Staff and the joint opening brief filed by the Community Renewable Energy Association (CREA) and the Renewable Energy Coalition (REC) (collectively, the Joint Qualifying Facility (QF) Parties).

The disputed issues in this case are narrow. There is no dispute that under certain circumstances a QF's siting decision may require PacifiCorp to procure and pay for incremental third-party transmission service that would not otherwise be required.[1] There is no dispute that QFs must pay the third-party transmission expense to protect customers from harm.[2] The remaining dispute is now largely whether the QF must pay the actual costs they impose or a forecasted estimate. PacifiCorp recommends that the Commission approve a simple pass-through mechanism that requires QFs to pay the company's actual costs based on the third-party provider's tariffed rates, as those rates change over time. Staff and the Joint QF Parties, on the other hand, want PacifiCorp to estimate how a third-party transmission provider's tariffed rates will change over time and provide the QF with a fixed price option based on that forecast.

Requiring the QF to pay the actual costs PacifiCorp incurs protects customers from undue price risk and strikes a reasonable balance between the interests of QF developers and customers. Although the QF developer will not know with certainty what the third-party costs will be over the life of its contract, it will know that it will pay no more and no less than the actual costs set forth in the third-party provider's publicly available tariff. Neither the

[1] *In the Matter of the Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 17 (Feb. 24, 2014).
[2] Order No. 14-058 at 22; *In the Matter of the Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 18-181 at 5 (May 23, 2018).

Public Utility Regulatory Policies Act (PURPA) nor the Federal Energy Regulatory Commission's (FERC) rules nor Oregon law obligate PacifiCorp to offer a forecasted estimate of third-party transmission costs over the life of the QF contract. Given its discretion, the Commission should protect customers by approving PacifiCorp's proposed pass-through mechanism and require QFs to pay the discrete and readily identifiable third-party transmission costs they impose.

PacifiCorp's recommendation to the Commission remains the same. *If the QF pays the third-party transmission provider's actual tariffed rates, as those rates change over time*, then PacifiCorp supports either proposal described by the Commission in Order No. 18-181 for recovering third-party transmission costs from QFs that impose additional costs due to their chosen delivery point.[3] But Staff's modified proposal is preferable because it provides greater flexibility through a periodic re-study of the need for third-party transmission service. A simple pass-through mechanism of actual costs incurred is straightforward and ensures that the QF pays no more and no less than the actual costs paid by PacifiCorp to the third-party provider, thereby ensuring customer indifference.[4]

If the Commission allows the QF to pay third-party transmission costs incurred by PacifiCorp calculated based on a forecast of the third-party provider's transmission rate, then the company recommends that the forecasted third-party transmission costs be reset at

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[3] There was apparently confusion among the parties as to what each of the options identified in Order No. 18-181 entailed. As described in PacifiCorp's opening brief, the company's proposal would require the QF to pay the actual third-party provider's tariffed rates. PacifiCorp's Opening Brief at 6–8. The company originally understood that Staff's modified proposal would have also required the QF to pay the actual third-party transmission costs under either the five-year-re-study option or the non-re-study option. PacifiCorp's Opening Brief at 8–9. But both Staff and the Joint QF Parties recommend that QFs pay a forecasted estimate, not the actual third-party costs paid by PacifiCorp. *See, e.g.*, Staff Opening Brief at 4; Joint QF Parties Opening Brief at 2.

[4] *See* Order No. 14-058 at 12.

least every five years, if not more frequently, to minimize the variance between the actual and estimated third-party transmission tariff rates. The pricing reset should also include a re-study of the need for incremental third-party transmission service.

II. ARGUMENT

A. QFs should pay the actual transmission charges based on the applicable third-party provider's tariff.

Both Staff and the Joint QF Parties propose that the company forecast the third-party provider's transmission rates and charge the QF the forecasted estimate, instead of the actual charges.[5] PacifiCorp opposes any proposal that requires the company to forecast third-party transmission rates.

1. Forecasting another utility's transmission rates unreasonably shifts price risk onto customers.

If the QF pays third-party transmission costs based on a forecasted transmission rate, instead of based on the actual rates as they may be adjusted over time, then the QF shifts price risk onto retail customers in a manner not mandated by either PURPA or FERC's or this Commission's implementing regulations or guidance. Accordingly, such a result is contrary to the Commission's "efforts to balance encouraging QF development with maintaining ratepayer indifference."[6] The Commission has recognized that long-term cost estimates "increase the likelihood of forecasting errors . . . thus potentially subjecting

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[5] *See, e.g.*, Staff Opening Brief at 4; Joint QF Parties Opening Brief at 10–15.
[6] *See, e.g.*, *In the Matter of Portland Gen. Elec. Co.*, Docket No. UM 1894, Order No. 18-025 at 3 (2018) ("In implementing PURPA, we have, on a number of occasions, reaffirmed our intention 'to encourage the economically efficient development' of QFs, 'while protecting ratepayers by ensuring that utilities pay rates equal to that which they would have incurred in lieu of purchasing QF power.' Our orders implementing PURPA reflect our efforts to balance encouraging QF development with maintaining ratepayer indifference.") (internal citation omitted).

ratepayers to costs that exceed a utility's actual avoided costs."[7] While FERC and this Commission recognize a QF's right to an estimated fixed rate for energy and capacity in long-term contracts, it is reasonable for QFs to pay the actual costs they impose on PacifiCorp for third-party transmission service when those costs are incurred pursuant to publicly available transmission rate tariffs developed in transparent processes and applied in a non-discriminatory manner. The incremental third-party transmission costs are also easily identified and can be passed through dollar-for-dollar to the QF requiring the incremental third-party transmission service.

Moreover, imposing price risk uncertainty on customers is particularly unreasonable here because there is no established methodology for PacifiCorp to estimate another utility's transmission rates. The Joint QF Parties compare forecasting third-party transmission rates to forecasting commodity pricing.[8] But this comparison is inapt—PacifiCorp forecasts commodity prices using well established methodologies that have been vetted in numerous proceedings and that rely on observable forward markets and reputable third-party forecasts. There are no forward transmission markets or third-party forecasts of other utility's future transmission rates on which to build a long-term forecast. Forecasting another utility's transmission rates is inherently speculative and therefore imposes additional price uncertainty and risk on retail customers.

2. PURPA does not prohibit a straight pass-through of incremental third-party transmission costs paid by PacifiCorp.

The Joint QF Parties argue that "[b]ecause incremental third-party transmission costs are an element of the purchasing utility's forecasted avoided costs, the utility must offer to

[7] *In the Matter of Idaho Power Co.*, Docket No. UM 1725, Order No. 16-129 at 8 (Mar. 29, 2016).
[8] Joint QF Parties Opening Brief at 14.

enter into a contract containing a fixed cost for that element of its avoided costs just the same [as] it must offer a fixed cost of all other elements of the avoided costs."[9] Staff likewise claims that PURPA requires a fixed price option for QFs.[10] Contrary to this claim, PURPA does not require a fixed price option under all circumstances, including for the incremental third-party transmission costs that the Commission has already found are not an element of PacifiCorp's avoided cost prices.

FERC's rules and ORS 758.525 require that the company provide an option for a QF to receive a fixed avoided cost of energy and capacity—not the third-party transmission costs at issue here.[11] The Joint QF Parties' argument rests on the incorrect premise that the third-party transmission costs are a part of PacifiCorp's avoided cost of energy and capacity.[12] But the Commission made the exact opposite finding in Order No. 14-058—"any third-party transmission costs incurred by a utility to move QF output from the point of delivery to load would be costs that are not included in the calculation of avoided cost rates in standard contracts, and therefore are costs that are additional to avoided costs."[13] Based on that finding, the Commission concluded that "any costs imposed on a utility that are above the utility's avoided costs must be assigned to the QF in order to comport with PURPA avoided cost principles," *i.e.*, the requirement that PacifiCorp pay no more than its avoided cost.[14]

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[9] Joint QF Parties Opening Brief at 14.
[10] Staff Opening Brief at 3.
[11] *See, e.g.*, Joint QF Parties Opening Brief at 12 (arguing that Section 292.304(d)(2)(ii) "enables a qualifying facility to establish a *fixed contract price for its energy and capacity* at the outset of its obligation") (internal quotations omitted) (emphasis added); ORS 758.525 (applies to "avoided costs," which are defined as costs of energy and capacity).
[12] Joint QF Parties Opening Brief at 12 (arguing incremental third-party transmission costs are an "element of the purchasing utility's forecasted avoided costs").
[13] Order No. 14-058 at 22.
[14] Order No. 14-058 at 22.

In addition, the company's proposed treatment of third-party transmission costs is consistent with the treatment of third-party transmission arrangements for off-system QFs, which are costs paid by the QF dollar-for-dollar outside of the avoided cost price to keep customers indifferent.[15] Off-system QFs must arrange for third-party transmission to move their output to PacifiCorp's system.[16] In doing so, the off-system QF pays the third-party provider's published transmission rates as those rates change over time. Off-system QFs are not entitled to fixed-price transmission service to PacifiCorp's system. There is therefore no compelling reason why this result should be different for QFs imposing third-party transmission costs on PacifiCorp.

Moreover, requiring QFs to pay the actual third-party transmission costs imposed on PacifiCorp will not unreasonably jeopardize QF development. The fact that off-system QFs can obtain financing even though their third-party transmission costs are not fixed shows that the company's recommendation here will also not unreasonably burden QF development.

Because PURPA's fixed price requirement applies to only the avoided cost price—not incremental third-party transmission expense—the Commission should reject the proposals here that shift undue risk onto customers.

[15] *See* 18 C.F.R. § 292.303(d) (avoided costs do not include transmission costs incurred by off-system QF). Although not directly analogous, QFs are also responsible for interconnection costs, which can include ongoing operating and maintenance expenses, administrative costs, and insurance costs—all of which are paid out over time and are not known or fixed at the outset of the QF's contract. *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, 45 Fed. Reg. 12,214, 12,217 (Feb. 25, 1980); *see also* 18 C.F.R. § 292.101(b)(7) (defining "interconnection costs" to explicitly include ongoing maintenance costs); *see also* OAR 860-082-0035(2)-(3) (interconnection customer pays for ongoing maintenance of interconnection facilities and equipment even if the utility owns the facilities and equipment).

[16] Order No. 69 at 12,220; *Public Serv. Co. of New Hampshire v. New Hampshire Elec. Coop., Inc.*, 83 F.E.R.C. P61,224, 62000 (F.E.R.C. May 29, 1998).

3. If the Commission chooses to provide QFs an option to reimburse PacifiCorp for third-party transmission costs based on a fixed estimate of third-party transmission rates, such fixed price option should be for no longer than five years.

Both Staff and the Joint QF Parties recommend that the Commission require PacifiCorp to provide a fixed price option over the 20-year term of the QF contract (*i.e.*, at the QF's choosing, PacifiCorp would be required to estimate a third-party's transmission rates over the entire term of the contract).[17] As addressed above, PacifiCorp contends that neither state nor federal law requires PacifiCorp's customers to assume fixed price risk for third-party transmission rates that are readily identifiable to the QF through published tariffs. However, should the Commission decide that QFs should be afforded this fixed price option with respect to third-party transmission rates, there is no requirement or justification that such fixed price option should extend for the entire term of the power purchase agreement. Indeed, the Commission recently confirmed that neither federal nor state law require fixed price contracts of a particular duration,[18] which is consistent with the fact that PacifiCorp's current standard contracts do not have a fixed avoided cost price for the entire term.[19] Resetting the third-party transmission pricing at least every five years minimizes customer's exposure to unnecessary price risk associated with the imposition of incremental transmission costs by QFs. A periodic update of the forecast is particularly important for third-party transmission expense because there is no established methodology for forecasting this expense, as discussed above. Thus, if the Commission requires a fixed price option, it should be for no more than five years.

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[17] Joint QF Parties Opening Brief at 2; Staff Opening Brief at 4.

[18] Order No. 16-129 at 7.

[19] *See* Order No. 16-129 at 8 ("That policy provides for 20-year contracts, with prices fixed at avoided cost rates in place at the time of signing remaining in effect for a 15-year period, and indexed pricing for the remaining five years…").

B. Administrative issues associated with QF payment of third-party transmission charges.

1. Applicability of cost recovery mechanism is limited.

Staff recommends that the payment of incremental third-party transmission expense by QFs applies only in the "circumstances described by PacifiCorp in its testimony and when included in an addendum to the standard contract executed at the same time as the standard contract."[20] The company agrees and acknowledges, as it has for some time, that it will likely be very unusual that a QF's specific circumstances require it to pay for incremental third-party transmission service.

2. The Joint QF Parties' administrative recommendations are unnecessary and internally inconsistent.

The Joint QF Parties recommend that the Commission "adopt strict rules to administer the load pocket issue" because "whether there are incremental third-party transmission costs and in what amount will require a process to evaluate each QF's unique circumstances."[21] The company agrees that whether a particular QF will require incremental third-party transmission service will require a fact-specific inquiry based on the circumstances of the individual QF, which is precisely why the Joint QF Parties' specific proposals are problematic.

First, for the fixed price option, the Joint QF Parties propose that PacifiCorp develop and publish a dollar-per-megawatt-hour rate, based on the Bonneville Power Administration's (BPA) rates, for incremental third-party transmission charges.[22] Not only is a fixed price option poor policy, as discussed above, this proposal is unnecessary. BPA's

[20] Staff Opening Brief at 5.
[21] Joint QF Parties Opening Brief at 17.
[22] Joint QF Parties Opening Brief at 18.

transmission rates are publicly available through BPA's tariff. Thus, to the extent a prospective QF wants an understanding of the potential third-party transmission expense it would pay, the QF has access to the same information as PacifiCorp.

In addition, the Joint QF Parties' own brief demonstrates the futility of publishing generic third-party transmission pricing. The Joint QF Parties argue that PacifiCorp may have access to less expensive pricing options, such as BPA network transmission or short distance discounts, which the Joint QF Parties point out will require that the "incremental third-party transmission costs" will need to be established based on "each QF's unique circumstances."[23] To be clear, consistent with the Order No. 18-181,[24] PacifiCorp will obtain only long-term firm point-to-point transmission service under the circumstances at issue here, not network transmission service from BPA or any other third-party provider. But PacifiCorp agrees with the Joint QF Parties that the transmission cost for each QF will be established on an individual basis, depending on the necessary third-party transmission capacity and provider. Therefore, it is unnecessary to require PacifiCorp to publish generic rates that will not be directly applicable to QFs.

Second, the Joint QF Parties also recommend that Schedule 37 include a specific process for addressing the third-party transmission issue in the contracting process.[25] First, the Joint QF Parties request that the Commission impose strict deadlines for the company to submit its transmission service request and for PacifiCorp's transmission function to complete its study process to determine, on an individual QF-basis, whether and the extent of

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[23] Joint QF Parties Opening Brief at 17.
[24] Order No. 18-181 at 5–6 (both proposals at issue here require long-term firm point-to-point transmission service).
[25] Joint QF Parties Opening Brief at 18–19.

third-party transmission service that may be required. This recommendation is unnecessary—the company's open access transmission tariff already includes study timelines for transmission service requests.

Second, the Joint QF Parties request that the company provide copies of all studies used to determine the need for incremental third-party transmission service.[26] The company does not object to this request. The Commission should make clear, however, that if a QF disputes the results of those studies, it cannot re-litigate issues addressed and resolved in this docket—namely, that if incremental third-party transmission service is required due to a QF, the QF—not customers—pays for that service.

C. Interconnection issues are outside the narrow scope of this case.

Staff acknowledges that the Joint QF Parties raised issues regarding interconnection costs that are outside the scope of this docket.[27] The company agrees with Staff—the Commission has been clear that this case is "not addressing QF interconnection issues, which have been thoroughly litigated and addressed in previous proceedings[.]"[28] To the extent the Commission wants to revisit its QF interconnection policies, that issue should be addressed in a generic proceeding.

III. CONCLUSION

PacifiCorp's recommendation to the Commission remains the same. *If the QF pays the third-party transmission provider's actual tariffed rates*, then PacifiCorp supports either proposal described by the Commission in Order No. 18- 181 for recovering third-party transmission costs from QFs that impose additional costs due to their chosen delivery point.

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[26] Joint QF Parties Opening Brief at 19.
[27] Staff Opening Brief at 6.
[28] Order No. 18-181 at 4–5.

But Staff's modified proposal that allows for periodic re-study of the need for third-party transmission service is preferable because it provides greater flexibility. On the other hand, *if the Commission allows the QF to pay the third-party transmission costs calculated based on a forecast of the third-party provider's transmission rate,* then the company recommends that the third-party transmission costs be reset at least every five years to minimize the variance between the actual and estimated third-party transmission tariff rates. The pricing reset should also include a re-study of the need for incremental third-party transmission service.

Respectfully submitted this 8th day of January, 2019.

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