

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1610**

4 In the Matter of
5 PUBLIC UTILITY COMMISSION OF
6 OREGON,
7 Investigation into Qualifying Facility
8 Contracting and Pricing.

STAFF CLOSING BRIEF

9 **I. Introduction.**

10 At issue in this third phase of Docket No. UM 1610 is how to determine and allocate
11 third-party transmission costs PacifiCorp incurs when a qualifying facility “QF” is located in a
12 load pocket in PacifiCorp’s service territory and PacifiCorp must acquire incremental third-party
13 transmission to move the QF’s generation to load. In May 2018, the Commission issued an order
14 directing the parties to address two alternate proposals for determining and allocating third-party
15 transmission costs were made by PacifiCorp and Staff at the conclusion of Phase II of Docket
16 No. UM 1610.¹ Subsequently, the administrative law judge (ALJ) adopted the parties’
17 suggestion to address the alternate proposals with two rounds of simultaneous briefs.

18 The two proposals at issue are described in the Commission’s May 2018 order as follows:

19 PacifiCorp's initial proposal to procure long-term, firm, point-to-point
20 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
21 addendum to be consistent with PURPA.

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-
23 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-
24 party transmission that would reset every five years.

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¹ Order No. 18-181, pp. 5-6.

1 **II. Staff proposal.**

2 In its Phase III opening brief, PacifiCorp clarified that under its proposal, the cost of the
3 third-party transmission allocated to the QF would be the actual cost of transmission charged by
4 the transmission provider, which is subject to periodic changes. Therefore, the price for the
5 third-party transmission charged to the QF would not be fixed at the time the standard contract
6 between the QF and PacifiCorp is executed. Instead, PacifiCorp proposes the Company and QF
7 would execute an addendum to the standard contract “that would describe the pass-through of
8 transmission costs paid to the third-party transmission provider based on the pricing set forth in
9 the third-party transmission provider’s OATT.”²

10 PacifiCorp’s proposal, as a stand-alone option, is not consistent with the Federal Energy
11 Regulatory Commission (FERC) regulation requiring that QFs have the option for a PURPA
12 contract with prices fixed at the time the contract is executed. 18 C.F.R. §292.304(2)(d) provides
13 that each QF shall have the option to either: (1) provide energy as the qualifying facility
14 determines such energy to be available for such purchases, in which case the rates for such
15 purchases shall be based on the purchasing utility's avoided costs calculated at the time of
16 delivery; or (2) provide energy or capacity pursuant to a legally enforceable obligation for the
17 delivery of energy or capacity over a specified term. For purchases pursuant to a legally
18 enforceable obligation, “the rates for such purchases shall, at the option of the qualifying facility
19 exercised prior to the beginning of the specified term, be based on either: (i) The avoided costs
20 calculated at the time of delivery; or (ii) The avoided costs calculated at the time the obligation
21 is incurred.”³

22 The opening brief of the Community Renewable Energy Association (CREA) and the
23 Renewable Energy Coalition (REC) (together the “Joint QF Parties”) describes FERC issuances
24 and federal court opinions that explain that the option for a contract with prices fixed at the time

25 ² UM 1610 Phase III PacifiCorp’s Opening Brief, p. 7.

26 ³ 16 U.S.C. 292.304(2)(d)(i) and (ii).

1 of contracting was intended to provide QF developers the certainty necessary to invest in the
2 facility. The Joint QFs also point to case law and opinions reflecting that “FERC has
3 ‘consistently affirmed the right of QFs to long-term avoided cost contracts or other legally
4 enforceable obligations with rates determined at the time the obligation is incurred, even if the
5 avoided costs at the time of delivery ultimately differ from those calculated at the time the
6 obligation is originally incurred.’”⁴

7 Staff’s Phase II proposal for two different pricing options is predicated on the PURPA
8 implementation requirement that QFs have the option for a fixed price that is known at the time
9 the QF enters into a standard contract or the utility otherwise incurs a legally enforceable
10 obligation to purchase the QF’s energy and capacity.⁵ The first pricing option in Staff’s proposal
11 would allow the QF to elect a fixed price for third-party transmission for the term of the PPA.
12 The actual price for third-party transmission for the term of the contract would not be known at
13 the time the utility executes the standard contract or otherwise incurs a legally enforceable
14 obligation to purchase the QF’s output. This is because the actual cost of transmission service
15 over the term of the standard contract will be based on prices charged under the transmission
16 provider’s Open Access Transmission Tariff (OATT), which are subject to change.

17 Under Staff’s first option, PacifiCorp would forecast the cost of acquiring third-party
18 transmission for the term of the PPA and this forecasted cost would be included in an addendum
19 to the standard contract executed contemporaneously with the standard contract. Because the
20 price charged to the QF for third-party transmission would be established for the term of the
21 standard contract at the time of contract execution, this pricing option is consistent with 18
22 C.F.R. §292.304(2)(d).

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24 ⁴ Joint QF Brief *quoting Allco Renewable Energy, Ltd. v. Mass. Elec. Co.*, 208 F. Supp. 3d 390,
25 398-400 (D. Mass. 2016) (*quoting JD Wind 1, LLC*, 130 FERC ¶ 61,127, 61,631 (Feb. 19, 2010),
and holding that rate based on unknown, future market prices does not comply with 18 C.F.R. §
292.304(d)(2)(ii)).

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⁵ UM 1610 Phase II Staff Prehearing Memorandum, pp. 40-42 (September 2, 2015).

1 The second pricing option in the Staff proposal is based on the availability of
2 transmission service contracts for five-year increments. Under the second pricing option, the QF
3 could elect to have PacifiCorp acquire long-term, firm, point-to-point transmission, in five-year
4 increments. Prior to renewing any third-party transmission contract at each five-year mark,
5 PacifiCorp would evaluate whether third-party transmission is still needed to move the QF's
6 generation to load and would discontinue purchasing the transmission if it is no longer needed.
7 Under this option, PacifiCorp would forecast the cost of transmission prior to entering into each
8 five-year commitment and the cost allocated to the QF would be updated at every five-year
9 increment. PacifiCorp's agreement to acquire transmission in five-year increments, the
10 forecasted cost of the first five-year increment, and the parties' agreement that the QF would pay
11 the forecasted cost of transmission in subsequent years, would be included in an addendum to the
12 standard contract.

13 Staff's proposal, which includes two alternate pricing options, is intended to adhere to the
14 PURPA requirement that QFs have the option to sell generation at a fixed price that is
15 determined at the time of contract execution (or legally enforceable obligation) but also provide
16 QFs and PacifiCorp a more flexible pricing option that balances the interests of ratepayers and
17 QFs. The QF benefits under the flexible pricing option because the utility is required to
18 reevaluate the need for third-party transmission every five years. PacifiCorp's ratepayers benefit
19 because requiring the utility to forecast the transmission costs in five-year increments diminishes
20 the risk, or at least the potential for harm, associated with forecasting the costs of transmission
21 service for the entire term of the contract.

22 As PacifiCorp notes, a fixed-price option like that in the Staff proposal carries with it risk
23 that the utility's actual cost of transmission will vary from the prices charged to a QF that are
24 based on forecasted costs. However, the Commission cannot address this risk by eliminating the
25 fixed-price option because a fixed-price option is necessary to comply with 16 C.F.R. §
26 292.304(2)(d). Instead, the Commission can alleviate the risk to some degree by adopting Staff's

1 proposal with the second pricing option that includes updates to the forecasted transmission costs
 2 every five years.

3 **III. The Joint QFs' proposal.**

4 The Joint QFs recommend that the Commission adopt PacifiCorp's proposal *and* Staff's
 5 proposal and provide QFs with three pricing options: (1) prices based on PacifiCorp's actual
 6 costs and subject to change throughout the term of the standard contract; (2) prices fixed at the
 7 time of contract execution based on the utility's forecasted costs for the term of the contract; or
 8 (3) prices fixed at the time of contract execution and updated on five-year increments if and
 9 when PacifiCorp renews its third-party transmission rights. Staff supports the Joint QFs'
 10 recommendation.

11 The figure below sets forth the three options.

12 **UM 1610 Ph. III, Third Party Transmission Costs**

QF Contract Length - Up to 20 years										
BPA Long-term Firm Point-to-Point Transmission - Renewal available, minimum five years										
BPA Transmission Rates - Updated every two years										

16 **Option 1**

16 Pass through transmission costs, including changes as they occur (e.g., BPA sets transmission rates every two years)

Reserve transmission	Reserve		Renew		Renew		Renew	
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual
No cost forecast								

18 **Option 2**

18 Forecast 20 years of transmission costs. Reserve transmission every five years at the same level.

19 Option 2 complies with the PURPA requirement to offer a fixed rate option.

Reserve transmission	Reserve		Renew		Renew		Renew	
	Forecast long-term costs (20 years)							

21 **Option 3**

21 Forecast five years of transmission costs.

22 Reevaluate the need for transmission every five years and adjust reservation as needed/available.

Reserve, renew transmission	Reserve		Renew option		Renew option		Renew option	
	Actual	Forecast 3 years	Actual	Forecast 4 years	Actual	Forecast 3 years	Actual	Forecast 4 years
Forecast medium-term costs (five year increments)								

25 Staff anticipates that PacifiCorp will oppose the Joint QFs' recommendation, but only
 26 because PacifiCorp believes it is inconsistent with PURPA to have an option for a fixed price for

1 the entire term of the contract because of the risk that PacifiCorp's actual costs will differ from
2 the forecasted costs. For the reasons discussed above, the fixed-price option proposed by Staff is
3 not inconsistent with PURPA but is in fact required by PURPA. Furthermore, 18 C.F.R.
4 §292.304(5) specifically provides that avoided cost prices that differ from the utility's actual
5 avoided costs over the term of the contract do not violate the pricing provisions of PURPA.

6 Staff acknowledges that although it is permissible under PURPA for a utility's actual
7 avoided costs to diverge from prices paid to a QF, the risk that this may occur is one the
8 Commission takes very seriously and attempts to ameliorate when possible. The other two
9 pricing options discussed in this brief do address the risk and potential harm identified by
10 PacifiCorp. However, because the Commission must ensure that QFs have a fixed price option,
11 the Commission cannot eliminate the risk that actual costs may diverge from forecasted prices by
12 eliminating the fixed-price option. Instead, the reasonable method of addressing the risk is to
13 require PacifiCorp to offer all three options presented in Phase III.

14 **IV. Staff recommends the Commission adopt two of the three administrative**
15 **requirements proposed by the Joint QFs.**

16 The Joint QFs recommend that the Commission impose the following administrative
17 requirements along with the three pricing options discussed above.

- 18 (1) The fixed-price reduction for third-party point-to-point transmission shall
19 be published and made available with PacifiCorp's avoided cost rate
20 schedule and thus subject to review and challenge along with other rate
21 components at the time avoided cost rates are approved.
- 22 (2) The rate schedule and standard contract should also include the following
23 explanatory points and requirements:
- 24 (a) The incremental third-party transmission cost deduction's applicability
25 and, if applicable, the cost amount, would be determined on a contract-by-
26 contract basis;
- (b) If PacifiCorp determines that incremental third-party transmission costs
should be assigned to the QF, PacifiCorp will immediately provide the
QF with a copy of the studies performed by PacifiCorp Transmission and
any other applicable third-party Transmission Providers that PacifiCorp

1 relies upon to support the determination of the need for third-party
2 transmission that imposes an incremental cost on PacifiCorp in order for
PacifiCorp to integrate the QF's output;

3 (c) QFs may challenge PacifiCorp's determination of the need for third-party
4 transmission that imposes an incremental cost on PacifiCorp, and
5 PacifiCorp's proposed cost for such charges, in a forum with jurisdiction
to resolve such dispute; and

6 (3) A QF that is already a network resource making sales to PacifiCorp under
7 an existing PPA remains a network resource and is not subject to
additional transmission costs upon renewing its PPA.

8 Staff supports the Joint QFs' administrative requirements nos. 1 and 2. Staff does not
9 support the Joint QFs' proposed third administrative requirement that would prevent PacifiCorp
10 from requiring a QF to pay for third-party transmission upon renewal of an existing PPA. An
11 existing PPA does not provide a QF with a right to be free from third-party transmission charges
12 in the future.

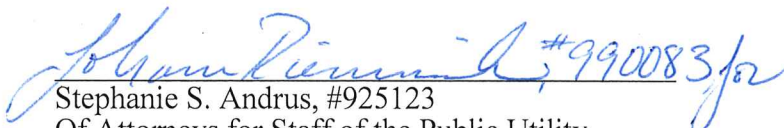
13 **V. Conclusion.**

14 Staff recommends the Commission adopt both Staff's modified proposal and
15 PacifiCorp's proposal and provide QFs three options related to paying third-party transmission
16 costs incurred to transmit a QF's generation from a load pocket in PacifiCorp's service territory.

17
18 DATED this 8th day of January 2019.

19 Respectfully submitted,

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