

ORDER NO. 20-203

ENTERED: Jun 24 2020

**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: DOCKET CLOSED

**I. BACKGROUND**

Order No. 20-064 documented our approval, at a Public Meeting on February 25, 2020, of the third amended compliance filing by PacifiCorp d/b/a Pacific Power under Order No. 19-172. The Third Amended Compliance filing revised tariffs and standard contract language for qualifying facilities (QFs) to implement two methods for allocating costs to a QF located in load pocket for incremental transmission service arrangements on a third-party transmission system.

During the Public Meeting on February 25, 2020, we addressed a contention by the Community Renewable Energy Association (CREA) and the Renewable Energy Coalition (the Coalition) that PacifiCorp could avoid needing to arrange point-to-point transmission service by using network transmission service. At the time, PacifiCorp opined that the arrangement suggested by CREA and the Coalition could not be accomplished in a manner making it both legal and effective. To allow further discussion, we directed that a brief examination occur “on the limited question of whether the designation of a Qualifying Facility (QF) as a network resource under PacifiCorp’s network integration transmission service agreement with BPA represents an opportunity for PacifiCorp to avoid incremental transmission costs related to a QF that is in a load pocket.”<sup>1</sup>

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<sup>1</sup> Order No. 20-064 at 1 (Mar 3, 2020).

During the prehearing conference to establish a procedural schedule to address this questions, the parties identified a fundamental disagreement about the nature of the question—*i.e.*, whether it is legal, factual, or both. The parties were directed to file written comments addressing the nature of the question. PacifiCorp filed opening comments on April 30, 2020. CREA and the Coalition (the Joint QF Parties) filed opening comments on April 30, 2020, and response comments on May, 7, 2020. As we had identified the limited question to be addressed, the administrative law judge internally certified the issues to us determine its nature and scope.

## II. DISCUSSION

### A. PacifiCorp's Position

In comments, PacifiCorp explains that the company understood the viability of a BPA network transmission alternative to have been previously examined in this docket, and to have been eliminated as a feasible option in prior orders. PacifiCorp previously provided an extensive explanation for why using network transmission service on BPA's system, as the Joint QF Parties suggest, either would fail to comport with Federal Energy Regulatory Commission (FERC) policy and precedent, or if it were structured to be consistent with FERC rules, would fail to prevent the assessment of point-to-point charges to QFs. PacifiCorp asserts that the Joint QF Parties' position is based on past discovery responses by the company that do not actually provide the evidentiary support that the Joint QF Parties allege. PacifiCorp further asserts that the Commission ordered a brief examination to facilitate further discussion on PacifiCorp's views that using network transmission service on BPA's system would not avoid incremental transmission costs related to a QF sited in a load pocket, with the Commission recognizing that it might be helpful for PacifiCorp to file information and citations supporting its position. On this basis, PacifiCorp argues that the question identified by the Commission is primarily, if not exclusively, legal in nature and best addressed with comments and legal briefing. Indeed, using a contested case procedure would be inconsistent with the Commission's directive for a brief examination, PacifiCorp observes. PacifiCorp anticipates discussing key sections of PacifiCorp's open access transmission tariff (OATT), BPA's OATT, as well as FERC precedent that would prevent the use of BPA network transmission as proposed by the Joint QF Parties. PacifiCorp would also clarify certain 2016 PacifiCorp discovery responses that have created confusion. Any additional detail would clarify—not expand—the existing record, PacifiCorp indicates. Before extensive discovery is conducted, the legality of the Joint QF Parties' proposal to avoid the need for point-to-point transmission service by having PacifiCorp use network transmission service on BPA's transmission system should first be explored, PacifiCorp argues.

**B. Joint QF Parties' Position**

The Joint QF Parties counter that the Commission's question really involves facts as well as law. They understand PacifiCorp's position to be "it would be illegal for PacifiCorp to designate a QF as a network resource under PacifiCorp's network transmission service agreement (NITSA) with BPA"<sup>2</sup> because doing so would result in a double network resource designation under the BPA NITSA and a separate NITSA with PacifiCorp Transmission, thereby making the BPA NITSA ineligible to use for generation owned by PacifiCorp or by QF generation serving PacifiCorp loads. Yet PacifiCorp has admitted in prior discovery in these proceedings, the Joint QF Parties note, that the company has used the BPA NITSA to move Oregon QFs' generation between load pockets while conceding that the company regularly uses the BPA NITSA to transmit PacifiCorp-owned generation out of load pockets.<sup>3</sup> Thus, this information indicates a need for PacifiCorp to provide some facts regarding "why PacifiCorp's previous use of its BPA NITSA was not an unlawful double designation under the BPA NITSA and the PacifiCorp Transmission NITSA[; whether] PacifiCorp no longer uses the BPA NITSA for purposes that are now alleged to be illegal[; and] what purpose PacifiCorp does use the BPA NITSA."<sup>4</sup>

Acknowledging that the Commission sought a "brief examination" and that it may not be possible to ascertain all pertinent facts due to recent events related to the COVID-19 pandemic, the Joint QF Parties indicate it might be appropriate for the Commission to close the docket without further consideration of the question it identifies so long as the Commission allows a QF to argue in the future, through a complaint or otherwise, that PacifiCorp should consider using the BPA NITSA instead of BPA point-to-point transmission to resolve a load pocket issue.<sup>5</sup>

Alternatively, if the Commission would like to address the question through a brief examination, the Joint QF Parties recommend legal briefing that relies on the existing facts already established by PacifiCorp's discovery responses regarding the company's use of the BPA NITSA. Assuming PacifiCorp will be bound by prior discovery responses, the Joint QF Parties indicate that other parties will not be prejudiced by the allegation of new facts that cannot be investigated and verified or challenged. The Joint QF Parties oppose PacifiCorp's proposal to clarify prior discovery responses, however. They state: "[i]t is difficult to understand how any fair process could allow PacifiCorp to

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<sup>2</sup> Comments on Procedural Schedule of Community Renewable Energy Association and the Renewable Energy Coalition, at 2 (Apr 30, 2020).

<sup>3</sup> See Objection to PacifiCorp's Compliance Filing of the Community Renewable Energy Association and the Renewable Energy Coalition at 12-14 and Attachment 1 at 1-8 (Jul 29, 2019).

<sup>4</sup> Comments on Procedural Schedule of Community Renewable Energy Association and the Renewable Energy Coalition, at 2-3 (Apr 30, 2020).

<sup>5</sup> *Id* at 2-3.

introduce new facts in an effort to change existing factual record that unambiguously establishes that PacifiCorp has used the BPA NITSA for QF and Company – owned generation located in load pockets.”<sup>6</sup> They recommend that PacifiCorp lead with an opening brief, and that Staff and intervenors have an opportunity to respond.

### III. RESOLUTION

We identified a limited question, for a brief examination, regarding whether a QF may be designated as a network resource under PacifiCorp’s network integration transmission service agreement with BPA for the purpose of guiding future policy. Our question was not based on a specific fact-based scenario, but instead was fundamentally a forward-looking, policy-based question that is legal in nature. The objective was to determine what PacifiCorp can legally do in the future with QF output in a load pocket.

Given the nature of our question, if we were to take it up at this time, we would likely deem it unnecessary and unhelpful to consider prior discovery responses by PacifiCorp that address past actions by the company. The question is not what PacifiCorp has done in the past—rightly or wrongly from a compliance perspective—but what can it can legally do in the future.

Despite concluding that our question is legal in nature, we decline to engage in a process at this time to answer it. Both parties wished to address facts in some way, and we recognize that legal questions are often best considered and resolved with application to an existing set of facts. We do not have at this time an existing set of facts, in terms of an existing QF that is locating in a load pocket and seeks to sell its output in the future, under the arrangement that the Joint QF Parties pose is possible. For this reason, we find the Joint QF Parties’ recommendation to close the docket and defer consideration of our identified question to sometime in the future when a QF presents a specific set of facts calling for an application of the law to be the most appropriate and reasonable option. We close the docket and acknowledge that a QF may later ask us to consider PacifiCorp’s transmission options to resolve a specific load pocket issue.

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<sup>6</sup> Response Comments on Procedural Schedule of Community Renewable Energy Association and the Renewable Energy Coalition, at 2, citing Joint QF Parties’ July 29th Objection at 12-14 & Attachment 1 at pp. 1-8 (May 7, 2020).

**IV. ORDER**

IT IS ORDERED that docket UM 1610 is closed.

Made, entered, and effective Jun 24 2020.



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**Megan W. Decker**  
Chair



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**Letha Tawney**  
Commissioner



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**Mark W. Thompson**  
Commissioner



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 Court of Appeals in compliance with ORS 183.480 through 183.484.