

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1442

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF)	APPLICATION FOR
OREGON)	RECONSIDERATION OR
)	CLARIFICATION
)	
Investigation to determine if PACIFIC)	EXPEDITED CONSIDERATION
POWER's rate revision has been consistent with)	REQUESTED
the methodologies and calculations required by)	
Order No. 05-584)	

I. INTRODUCTION

Pursuant to ORS § 756.561 and OAR § 860-014-0095, the Industrial Customers of Northwest Utilities (“ICNU”), Biomass One, Co-Gen II LLC, the Community Renewable Energy Association, and the Renewable Energy Coalition (collectively, “Joint Applicants”) request that the Public Utility Commission of Oregon (“OPUC” or the “Commission”) grant reconsideration and/or clarification regarding the scope and schedule for this investigation.

The Joint Applicants request that Commission’s investigation into PacifiCorp’s (or the “Company”) avoided costs review whether the Company’s proposed avoided cost tariffs are fair, just and reasonable, including all issues relevant to whether the tariffs accurately reflect the Company’s actual avoided costs. Specifically, the Commission should allow parties to review whether the methodologies PacifiCorp used to calculate its rate accurately reflect its actual avoided costs. Limiting any investigation into merely whether the tariffs are consistent with the methodologies and calculations

required by Order No. 05-584 will only ascertain the mathematical accuracy of the filings, but not whether the tariffs reflect the amount PacifiCorp would pay if the Company would not have purchased power from a qualifying facility (“QF”).

The Joint Applicants also request that the Commission clarify that the schedule in this proceeding need not require a final order by December 31, 2009. Unduly expediting the schedule in this proceeding could prevent parties from having an adequate opportunity to fully investigate, review and challenge PacifiCorp’s avoided cost tariffs. In addition, conducting too short of a proceeding may result in multiple and unnecessary changes to PacifiCorp’s avoided costs, because PacifiCorp may be required to file for new avoided costs following the Commission’s acknowledgement of its proposed integrated resource plan (“IRP”), which is expected to occur in early 2010, and a final Commission order in the resource sufficiency/deficiency proceeding.

The Joint Applicants seek expedited consideration of this Application for reconsideration and/or clarification. The Joint Applicants have filed this Application well in advance of the due date in order to obtain clarity regarding the scope and schedule prior to filing intervenor testimony, which is currently due on November 3, 2009.

II. BACKGROUND

On May 13, 2005, the Commission issued Order No. 05-584, which set policies and procedures intended to more effectively implement and achieve the goals of the Public Utility Regulatory Policies Act (“PURPA”). Re Staff’s Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 (May 13, 2005). Order No. 05-584, *inter alia*, established a methodology for calculating utility avoided costs. Id. at 27-29. The Commission adopted one of Staff’s recommendations to

use the natural gas fired plant as the proxy resource during resource deficiency periods, and a market based energy and capacity payment during resource sufficiency periods. Id. The Commission also recognized, however, that many issues had been inadequately factually developed and the Commission envisioned “an ongoing process to improve opportunities for QF power at realistic avoided cost rates.” Id. at 28-29.

The Commission opened a new investigation into determining the correct methodology for setting the resource sufficiency and deficiency periods in avoided cost rates on October 23, 2008. The resource sufficiency/deficiency proceeding was given Docket No. UM 1396 and is a follow-on proceeding from the Commission’s previous investigation into electric utility purchases from QFs in Docket No. UM 1129. Re Staff’s Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 54 (Sept. 20, 2006). The resource sufficiency/deficiency proceeding is fully briefed, with no party supporting the current methodology. In Docket No. UM 1396, on September 29, 2009, Administrative Law Judge (“ALJ”) Power issued a ruling, which includes a proposed decision outline that would revise the methodologies for setting avoided costs. Thus, a final Commission order in the resource sufficiency/deficiency proceeding may require PacifiCorp to change its avoided cost tariffs.

On May 29, 2009, PacifiCorp filed its 2008 IRP, which was docketed as LC 47. PacifiCorp’s 2008 IRP is under review by the Commission, and is scheduled to be addressed at the January 12, 2010 Commission open meeting. The Commission’s rules require that new standard rates for purchases from QFs shall be effective within 60 days after acknowledgement of a new IRP. OAR § 860-029-0040(4). Thus, PacifiCorp’s

avoided costs will likely be modified in early 2010 following acknowledgement of its IRP.

PacifiCorp filed Advice No. 09-012, seeking to revise its avoided cost tariffs on July 9, 2009. PacifiCorp's filing significantly reduced the avoided cost rates to be paid to QFs, especially during the alleged resource sufficiency period. For example, PacifiCorp has proposed new avoided costs during parts of the resource sufficiency period that are less than half of either the current avoided costs or the avoided cost during parts of the resource deficiency period.

Many of the Joint Applicants submitted letters and comments to the Commission regarding PacifiCorp's new avoided cost rates. ICNU specifically requested that the Commission suspend the new tariffs and conduct an investigation and hearing pursuant to ORS § 757.210 to determine whether the rate revisions proposed by PacifiCorp are fair, just and reasonable. Biomass One supported ICNU's request. To ensure that the Commission was legally obligated to conduct a complete investigation, ICNU filed a written complaint against Advice Nos. 09-012 on August 21, 2009. On August 27, 2009, ICNU elected to withdraw its complaint based on the understanding that the Commission determined to investigate and hold a hearing on all issues regarding PacifiCorp's avoided cost rates.

ALJ Grant issued a prehearing conference memorandum on September 17, 2009. ALJ Grant ruled that the Commission limited the scope of this investigation to whether the avoided costs "are consistent with the methodologies and calculations required by Order No. 05-584." Prehearing Conference Memorandum at 1 (Sept. 17, 2009). In addition, ALJ Grant adopted a schedule which has a target order date of

December 31, 2009. The schedule does not provide intervenors or Staff an opportunity to submit testimony responding to PacifiCorp's rebuttal testimony, and requires briefs to be filed one week after the evidentiary hearing. More importantly, given the significance of this proceeding to the QFs, the issues to be addressed in this proceeding should not be so limited and narrow.

III. ARGUMENT

The Joint Applicants request that the Commission clarify that this proceeding is intended to set new avoided cost tariffs that accurately reflect the cost of energy that PacifiCorp would incur if it did not purchase from QFs. Any investigation should review whether the Commission's existing methodology and standards accurately calculate PacifiCorp's avoided costs, as well as ensuring that the Company's inputs, calculations and forecasts are factually correct. The Commission should not abdicate its responsibility to ensure that QF rates are based on PacifiCorp's full avoided costs by refusing to review all relevant aspects of the Company's filing. Joint Applicants also request that the Commission set a schedule which provides them with additional and sufficient time to review PacifiCorp's avoided cost filing.

1. Legal Standard For Reconsideration

Any party may file for reconsideration of a Commission order within sixty days of the date of service of the order. OAR § 860-014-0095(1); ORS § 756.561(1).

The Commission may grant an application for reconsideration "if sufficient reason therefor is made to appear." ORS § 756.561(1). Under the Commission rules, reconsideration may be appropriate if the applicant shows that there is: 1) new evidence which was unavailable and not reasonably discoverable before issuance of the order; 2) a

change in the law or agency policy since the date the order was issued; 3) an error of law or fact in the order that is essential to the decision; or 4) good cause for further examination. OAR § 860-014-0095(3). Any of the above grounds, if essential to the Commission's decision, constitutes a sufficient reason to grant reconsideration. The Joint Applicants are filing this application prior to the full sixty day period for reconsideration to obtain clarification prior to the due date for testimony. In the event that the Commission finds that reconsideration is not appropriate, the Joint Applicants respectfully request that the Commission clarify that parties can challenge any aspect of PacifiCorp's avoided costs rates and that final order does not need to be issued by December 31, 2009.

2. The Commission Should Review All Aspects of PacifiCorp's Avoided Cost Rates

PacifiCorp's avoided cost tariffs must be based the Company's full incremental cost of energy and capacity that it would generate or purchase absent a purchase from a QF. The Commission cannot simply defer to past methodologies that have been used to set previous avoided costs, but must evaluate whether PacifiCorp's avoided cost tariffs filed in this proceeding reflect its current avoided costs. If the previously adopted methodologies no longer accurately reflect PacifiCorp's actual avoided costs, then the methodologies should be revised.

Federal and state law requires utilities to purchase electricity from QFs based on the utilities' full avoided cost. ORS § 758.525; FERC v. American Elec. Power Serv. Ass'n, 461 U.S. 402, 406 (1983). The full avoided costs are based on a utility's actual incremental costs that, but for the purchase from the QFs, the utility would

generate or purchase from another source. 16 U.S.C. § 824a-3(d); ORS §§ 758.505; 515.

Specifically, ORS § 758.505 defines avoided costs as:

the incremental cost to an electric utility of electric energy or energy and capacity that the utility would generate itself or purchase from another source but for the purchase from a qualifying facility.

Thus, the Commission's responsibility is not merely to ensure that PacifiCorp's filing is consistent with previous methodologies, but to independently determine whether the avoided costs reflect the Company's incremental energy and capacity costs that it would build or generate if it did not purchase power from QFs.

The Commission's existing methodology does not appear to reflect PacifiCorp's current avoided costs. For example, PacifiCorp's current filed IRP is *prima facie* evidence that the Company's avoided cost filing does not accurately value the incremental cost of energy and capacity. For the 2010 period, PacifiCorp's preferred portfolio proposes to acquire 269 MWs of wind, 137 MWs of demand side management ("DSM"), 50 MWs of front office transactions (market purchases), 53 MWs of coal upgrades, and 8 MWs of other resources. Although the Company has sufficient renewable energy to meet Oregon renewable portfolio standards until 2016, wind makes up the majority of the resources in the Company's least cost portfolio for 2010. Market purchases, in contrast, make up less than 10% of the total resources that PacifiCorp plans to acquire during 2010. Under PacifiCorp's avoided cost filing, however, power prices for all QFs (including renewable QFs) will be based on the Company's estimated value of market purchases. Parties should not be barred from challenging, and the Commission should not be bound to apply, a methodology which may no longer accurately set the

Company's actual avoided costs because it does not consider the resource that PacifiCorp plans to acquire.

3. The Commission Cannot Legally Preclude a Review of All Aspects of PacifiCorp's Avoided Cost Filing

The issues regarding whether the methodologies used to set PacifiCorp's avoided costs accurately reflect the value of avoided energy and capacity will not disappear if the Commission limits the scope of this proceeding. The Commission is already considering using different methodologies in the resource sufficiency/deficiency proceeding. The Commission should not limit the scope of this proceeding and review the reasonableness of the Company's avoided costs in other proceedings.

PacifiCorp's avoided cost tariffs are rates that must be reviewed to determine if they are accurate, just and reasonable. Oregon's version of PURPA states that avoided cost tariffs that utilities purchase electricity from QFs under are "rates." ORS § 758.515(2)(b). These "rates" must be approved and reviewed by the Commission to determine if they are "just and reasonable." ORS §§ 758.515(2)(b); .525. The Commission has stated that its goal is "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." Docket No. UM 1129, Order No. 05-584 at 1.

The Commission is required to conduct a hearing whenever a utility files "any rate or schedule of rates" if a written complaint is filed or upon its own motion. ORS § 757.210 (emphasis added). In such an investigation, the Commission must review all aspects of the rates to determine whether they are "fair, just and reasonable." Id. The

Joint Applicants are not aware of any law or Commission decision which states that the terms “any rate” and the “just and reasonable” standard in ORS § 757.210 are different and do not apply to the “rates” and “just and reasonable” standard in the Oregon PURPA law. In fact, ORS § 757.210 specifically applies to “any” rates, and is not limited to only non-QF rates.

The Commission is required to conduct a full investigation into the justness and reasonableness of PacifiCorp’s avoided cost rates because the Commission opened an investigation. It is irrelevant whether the investigation was initiated because ICNU filed a complaint or the Commission’s own motion. Neither ORS § 757.210 nor the Oregon PURPA statute allow the Commission to limit its investigation into the justness and reasonableness of the avoided cost rates to only specific subsets of PacifiCorp’s filing. Essentially, the Commission does not have the statutory authority to prevent parties from reviewing and challenging whether PacifiCorp’s avoided cost tariffs are actually equal the Company’s “forecasted incremental cost of electric resources” See ORS § 758.525.

The Commission could also be compelled to review PacifiCorp’s avoided cost rates under a complaint filed under ORS § 756.500. The complaint and investigation statute provides the right to any person to broadly challenge any utility action which is regulated by the Commission, which could include a complaint that PacifiCorp’s avoided cost rates are inconsistent with the Oregon PURPA statute. ORS § 756.500.

Regardless of the Commission’s statutory requirements, sound public policy dictates that it would be preferable to review all issues regarding the accuracy of PacifiCorp’s avoided cost rates in a single proceeding. Requiring parties to file separate

complaints or investigations regarding the Company's avoided cost rates would result in an unnecessarily disjointed and complex review process. The Commission should ensure that all relevant issues regarding PacifiCorp's avoided cost rate filing are consolidated and addressed in the same proceeding to ensure that the final order takes a consistent and holistic approach to PacifiCorp's avoided cost rates.

4. The Commission Should Provide Sufficient Time to Review All Relevant Avoided Cost Issues

The Commission should provide the ALJ in this proceeding with the flexibility to set a schedule which allows the parties an opportunity to fully litigate all issues relevant to whether PacifiCorp's proposed rates accurately reflect its avoided costs. The ALJ adopted an expedited schedule which provides the parties one week to draft briefs after the evidentiary hearing, provides Staff and intervenors little more than one month to review the Company's direct testimony and no opportunity to submit rebuttal testimony responding to PacifiCorp, and includes a target order date of December 31, 2009. The Joint Applicants requested that the ALJ adopt a different schedule, but the ALJ adopted the expedited schedule based on the understanding that the Commission required a target order date of December 31, 2009.

The current schedule suffers from the problem of not allowing Staff and intervenors an opportunity to respond to PacifiCorp's rebuttal testimony. PacifiCorp often files limited opening testimony and reserves its most important and comprehensive arguments for its rebuttal testimony. In this proceeding, PacifiCorp has filed short testimony of Dr. Hui Shu, which consists of only five pages of substantive analysis. Dr. Shu's testimony is also limited to addressing whether PacifiCorp's filing is consistent

with past Commission methodologies, and does not address the question of whether the rates accurately reflect the incremental cost to PacifiCorp of energy and capacity that the Company would generate itself or purchase from another source but for the purchase from QFs.

Extending the procedural schedule could also limit the number of potential changes to PacifiCorp's avoided cost rates during the end of 2009 and the start of 2010. As previously mentioned, PacifiCorp may file new avoided cost rates following a Commission order in the resource deficiency/sufficiency proceeding and its IRP proceeding. The Commission should seek to avoid a situation of pancaked avoided cost rate orders which could result in PacifiCorp changing its avoided costs up to four times in less than half a year. Few QFs will sign new contracts at PacifiCorp's new low avoided costs on December 31, 2009, especially if those low rates could change within a couple months because of IRP or resource sufficiency/deficiency outcomes.

IV. CONCLUSION

The Joint Applicants respectfully request that the Commission allow all parties to fully investigate, review and challenge all aspects of PacifiCorp's avoided cost rate filing that could cause the Company's rates to not be just or reasonable. Specifically, the parties should not be limited to only reviewing whether PacifiCorp's avoided cost inputs have been accurately calculated and that rates are consistent with past Commission methodologies. Instead, the parties should be allowed to raise any issue which is relevant to whether PacifiCorp's avoided cost rates are based on the incremental cost of energy and capacity that the Company would avoid by purchasing from QFs. The Joint

Applicants also request that the Commission allow the ALJ to establish a schedule which provides all parties a full opportunity to litigate the issues in this proceeding.

Dated this 6th day of October, 2009.

Respectfully submitted,

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October 6, 2009

Via Electronic and US Mail

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Re: Investigation to determine if PACIFIC POWER's rate revision has been
consistent with the methodologies and calculations required by Order No.
05-584

Docket No. UM 1442

Dear Filing Center:

Enclosed please find an original of the Application for Reconsideration or
Clarification on behalf of the Industrial Customers of Northwest Utilities, Renewable Energy
Coalition, Co-Gen II, LLC, Renewable Energy Association and Biomass One, L.P. in the above-
referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick
Brendan E. Levenick

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application for Reconsideration or Clarification of the Industrial Customers of Northwest Utilities, Renewable Energy Coalition, Co-Gen II, LLC, Renewable Energy Association and Biomass One, L.P. upon the parties on the service list, shown below, by causing the same to be sent by electronic mail to all parties, as well as, deposited in the U.S. Mail, postage-prepaid, to parties which have not waived paper service.

Dated at Portland, Oregon, this 6th day of October, 2009.

/s/ Brendan E. Levenick
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