BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE 235

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation Into Avoided Cost Purchases from Qualifying Facilities - Schedule 37	Response Brief of Renewable Northwest Project (Phase I)

Renewable Northwest Project ("RNP") appreciates the opportunity to respond briefly to the legal questions presented in Phase I of this docket and to PacifiCorp's initial filing.

RNP's view is that the Public Utility Regulatory Policy Act of 1978 ("PURPA") is not violated unless, in the aggregate, the Public Utility Commission of Oregon's ("Commission's") approach to setting rates for qualifying facilities ("QFs") systematically undervalues or overvalues the avoided cost. *See S. Cal. Edison Co. v. Pub. Util. Commn. Of Cal.*, 128 Cal. App 4th 1, 11 (Cal. Ct. App. 2005). RNP is agnostic about whether that circumstance exists here. To prove that a rate-setting approach that does not account for transmission costs violates PURPA, PacifiCorp would have to show that the costs of securing transmission service to deliver QF power to load are systematically higher than the transmission costs that distributed QF generation allows the utility to avoid.[1] This showing must consider *all* system QFs—not just those delivering to a load-constrained area. Merely demonstrating that transmission costs are likely to exceed benefits for certain

[1] FERC recently confirmed that utility commissions could increase avoided cost rates to reflect the cost of distribution and transmission upgrades that QFs allow utilities to avoid. *California Pub. Util. Commn. v. So. Cal. Edison Co. et al*, 133 FERC ¶ 61,059 (Oct. 21, 2010).

individual QFs, or for the class of QFs that connects to load-constrained areas, would not demonstrate a violation of PURPA and, therefore, would not compel the Commission to act.

Of course, the Commission can always choose to alter its approach to setting avoided costs. If the Commission chooses to incorporate transmission costs and benefits into its PURPA implementation, it should continue to bear in mind the policy considerations that have been significant to the Commission in the past. *See, e.g.,* OPUC Docket No. 1129. Published avoided cost rates are an alternative to identifying, on a case-by-case basis, the individualized supply value and avoided cost characteristics of each small QF. *See generally* OPUC Order No. 05-584, pages 16, 19, 28, 39. In setting standard rates, the most significant of these characteristics are addressed with generic formulas and rates. This may result in overpaying or underpaying individual QFs relative to their unique characteristics, but commissions tolerate some loss of precision in order to avoid the transaction and negotiation costs that would make it difficult for smaller-scale QF generators to take advantage of the market opportunity that the PURPA avoided cost is intended to provide. In PURPA policy dockets to date, the Commission apparently has not thought it worth including transmission as one of the key generic cost/value characteristics it uses to arrive at the published avoided cost for QFs smaller than 10 MW. *See id.* at 39.

Incorporating transmission costs and benefits into Oregon's avoided cost analysis could impact the streamlined framework that the Commission has made available to QFs 10 MW or smaller. It is possible that the Commission could preserve that framework by developing an easily applied, generic formula to calculate the transmission benefits and costs for QFs connecting to various points in the PacifiCorp system. This would be a substantial undertaking, but could smooth out the under- and overvaluing of individual QF projects without eroding the standardized framework. The alternative to a generic formula—requiring PacifiCorp and individual QFs to negotiate transmission benefits and costs on a project-by-project basis—would improve precision but create uncertainty and transaction costs that the standardized framework was intended to avoid. With transmission studies taking significant time to complete, this could significantly hinder standard QF development.

Whether it approaches transmission from a project-specific or more general perspective, the Commission should avoid a one-sided approach that would consider transmission only for a narrow class of QFs in which transmission costs to the utility are more likely to outweigh benefits. Transmission benefits of QFs not located in load-constrained areas should be given a full airing as well. Otherwise, the Commission will simply be trading one failure to value transmission costs for another failure to value the *avoidance* of transmission costs.

Finally, if there is a second phase of this docket, it will be important for the parties and the Commission to explore whether changes in PacifiCorp's practices surrounding transmission to load pockets could lower costs and achieve savings. For instance, PacifiCorp maintains that "prudent utility practice" requires it to have firm transmission to serve the entire load in a load-constrained area, even when a local QF serves the area. PacifiCorp's Opening Brief (Phase I), pages 5-6, 15-16. This may be true. But PacifiCorp has also implied that long-term, firm transmission is required to export the entire net capacity of the QF. *Id.* at 14. This seems more questionable. In both cases the Commission should explore the possibility that less expensive short-term, non-firm or conditional firm transmission products, perhaps combined with a curtailment backstop, could minimize costs and allow PacifiCorp to realize savings from distributed QF generators.[2]

In conclusion, at this stage it is not clear that PacifiCorp has demonstrated a PURPA violation that would require the Commission to incorporate transmission costs and benefits into its method for determining published avoided costs. If the Commission nonetheless chooses to do so, a second phase should consider costs and benefits broadly; remain mindful of potential impacts on the streamlined framework for small QFs; and explore mechanisms for lowering transmission costs and capturing savings. RNP appreciates the opportunity to comment.

DATED this 17th day of November, 2011.

Respectfully submitted,

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[2] On page 17 of its brief, PacifiCorp discusses the possibility of curtailment but appears to suggest that, in addition to curtailing QFs, it could make QFs responsible for the cost of displacing PacifiCorp generation within the load pocket. This is a troubling concept; QFs always have the potential to displace PacifiCorp generation, whether in load pockets or not, and QFs are not responsible for this displacement.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **RESPONSE BRIEF OF RENEWABLE NORTHWEST PROJECT (PHASE I)** on the following persons on November 17, 2011, by e-mailing to each a copy thereof:

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE 235

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation Into Avoided Cost Purchases from Qualifying Facilities - Schedule 37	**AMENDED CERTIFICATE OF SERVICE OF RESPONSE BRIEF OF RENEWABLE NORTHWEST PROJECT [PHASE I]**

I hereby certify that I served the foregoing **RESPONSE BRIEF OF RENEWABLE NORTHWEST PROJECT (PHASE I)** on the following persons on November 17, 2011, by e-mailing to each a copy thereof:

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