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July 27, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-1166

RE: OPUC Docket No. UM 1610 – Comments of City of Portland on *PacifiCorp's and PGE's Joint Application for Reconsideration and Joint Motion to Stay Compliance*; *Idaho Power Company's Application for Reconsideration, Rehearing and/or Clarification*; and Portland General Electric's July 12 *UM 1610 Schedule 201 Qualifying Facility Information Compliance Filing*

The City of Portland offers these comments regarding: the *Application for Reconsideration* and *Motion for Stay*, filed jointly by Portland General Electric (PGE) and PacifiCorp (the "*Joint Application*"); *Idaho Power Company's Compliance Filing and Application for Reconsideration, Rehearing, and/or Clarification;* and the compliance filings of all three utilities, filed on July 12, 2016 in Docket No. UM 1610. The City is not a party to Docket No. UM 1610. However the 'City has an interest that may be substantially affected if the Commission grants the utilities' requested relief. The City therefore submits these comments and respectfully asks that the Commission consider them in its decision.

I. The City of Portland's Interest in this Proceeding

The City operates the Portland Hydroelectric Project (PHP), located approximately 25 miles east of the City, on the Bull Run River. The PHP is comprised of two developments, directly interconnected to PGE, with a combined nameplate capacity of 35.7 MW. The PHP is part of the City's Bull Run water system, which reliably and affordably provides pure drinking water to more than 958,000 Oregonians. PGE has operated and purchased all net output from the PHP since 1982, and through its operational experience has optimized the operational flexibility of the PHP to maximize its value serving PGE's native load.

The City's existing power purchase agreement with PGE ends on August 31, 2017. On April 29, 2016, the City sent PGE a written request for indicative prices for a new, long-term, power purchase agreement in accordance with PGE Schedule 202, PGE's Commission-approved terms and conditions governing the sale and purchase of energy from Qualifying Facilities (QFs) greater than 10 MW in capacity. Presently the parties are in negotiations. Granting PGE and PacifiCorp's application for reconsideration, or even a stay on implementation of the price floor, would harm the City because PGE has offered indicative prices that are substantially lower than

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the floor prices ordered by the Commission.[1] To the City's knowledge, no other party to Docket No. UM 1610 has a pending request for a Schedule 202 power purchase agreement, and therefore no other party is likely to represent City's unique perspective.[2] Because the City may sell its output to another Investor Owned Utility (IOU) in the event negotiations with PGE fail, some of its comments apply generally to all three IOUs.

II. The IOUs' Opposition to the Price Floor

All three IOUs have applied for reconsideration of *Issue 7--Calculating Non-Standard Avoided Cost Prices*, in Order No. 16-174, wherein the Commission adopted a price floor for non-standard QF contracts. PacifiCorp argues that:

> If at any time, PacifiCorp is required to purchase the generation output from a QF at some pre-determined market price, and that price is greater than the cost of generation the utility would use to serve that load (as determined by GRID), the customer is not kept whole, but harmed.

Joint Application, p. 7.

Idaho Power raises similar concerns regarding the price floor:

> Imposing a wholesale power price forecast as an avoided cost floor for nonstandard avoided cost prices not only undermines the calculation of avoided costs by the ICIRP methodology, * * * but it only functions to inflate the price paid to a QF in those instances when the calculated avoided cost of the utility is below the wholesale price forecast.

Idaho Power Application, p. 13.

PGE argues that: (1) the price floor is illegal if, during the deficiency period, PGE would have to pay a large QF higher prices than it would pay a similarly situated QF under a standard contract; and (2) the market based price floor ignores the fact that the costs of a new natural gas or wind plant resource *could be* lower than the market prices. *Joint Application*, p. 8.

III. The City's Comments

For the reasons detailed below, the City suggests that: (1) the price floor adopted by the Commission does not violate PURPA; (2) PGE is misconstruing Order No. 16-174 when applying the price floor *and* when selecting the Standard rates from which to begin negotiations; and (3) the IOUs' compliance filings could better implement the Commission's desire to provide QFs information by publishing the price floor in their non-standard QF tariff.

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[1] For example, PGE's indicative price tendered to the City for January 2020, On-Peak, is $35.74/MWh. The following January 2021 (which marks the beginning of the deficiency period) On-Peak indicative price drops to $30.81/MWh.

[2] The City may also be uniquely entitled to the benefits of unmodified Order No. 16-174, due to its queue position at PGE, in the event the Commission grants PGE prospective relief, in whole or part.

A. PacifiCorp's and Idaho Power's rationale for why the price floor is illegal does not apply to PGE.

In Order No. 16-174, the Commission authorized the three IOUs to use different methodologies for calculating and negotiating non-standard QF prices. Order No. 16-174, p. 22 (making "no change" in how PGE negotiates non-standard avoided cost prices). Idaho Power and PacifiCorp use different computer system-simulation models to estimate the utility's avoided energy costs associated with a QF, taking into account site-specific characteristics. PGE uses standard avoided cost prices from its Schedule 201 as the starting point for price negotiations, with modifications allowed to address the factors in 18 C.F.R. § 292.304(e) as interpreted by the Commission's *Adopted Guidelines for Negotiation of Power Purchase Agreements for QFs 10 MW or Larger.*[3] The scope of the PGE approach is broader than either PacifiCorp's or Idaho Power's modeling approach, and each approach has its strengths and weaknesses. The model approach, with hourly or sub-hourly time steps, offers unsurpassed analytical granularity. However its complexity can make it difficult to identify logical or computational errors, or built-in bias. The PGE approach, with its closed list of factors to be considered in modifying standard prices, is finite and more transparent to the QF and the Commission alike. However consensus regarding how to apply some of those factors may take more time because PGE has seldom, if ever, applied its methodology.

The substantial differences between the PGE methodology, on the one hand, and the modeling methodologies of PacifiCorp and Idaho Power, on the other hand, make Idaho Power's and PacifiCorp's arguments against the floor inapplicable to PGE. Both Idaho Power's and PacifiCorp's arguments are premised upon a presumed "either-or" choice between the Market Price forecast (which is also a model approach) and their hourly avoided cost models. Such a premise, with respect to PGE's approach, does not exist because it does not calculate avoided cost using the model approach. Accordingly, even if the Commission were to determine that PacifiCorp's or Idaho Power's legal challenges to the price floor have merit, those challenges should not affect PGE or its methodology.

B. PGE's rationale for why the price floor is illegal is without merit.

PGE first argues that the price floor is illegal if, during the deficiency period, PGE would have to pay a large QF higher prices than it would pay a similarly situated QF under a standard contract. *Joint Application*, p. 8. If this argument were true, then it necessarily follows that non-standard rates must always be less than standard rates. This was never the Commission's intent, nor is such a rule required by PURPA.

PGE then argues that the market based price floor wrongly ignores the fact that the costs of a new natural gas or wind plant resource *could be* lower than the market prices. *Id.* PURPA does not require that the contract price in a QF contract never exceed a utility's avoided cost. FERC, in its Order adopting regulations implementing PURPA, in 1980, clarified that PURPA does not require "minute-by-minute" conformance of contract prices to avoided cost because forecasts

[3] See 18 C.F.R. § 292.304(e), and the Commission's guidelines for application, in Order No. 07-360, pp. 15-31, and Appendix A.

tend to even out over time.[4] And FERC has stated that it will not overturn state determinations of avoided cost just because a resulting price exceeds a utility's incremental cost so long as the methodology is consistent with PURPA.[5] The price floor in Order No. 16-174 is consistent with PURPA for the reasons set forth below.

C. The price floor Order No. 16-174 established for non-standard contract prices does not violate PURPA.

i. Market price forecasts do not exceed avoided cost when a utility is resource deficient.
The IOUs' factual predicate for their reconsideration--that market prices will exceed avoided costs during their deficiency period--is contrary to evidence in the record and economic theory. Except in times of scarcity, short-term market prices, or "spot-market prices" (upon which the IOUs' market price forecasts are based) should be lower than the cost to build a new resource. Spot-market prices reflect short-term commitments and therefore can be supplied by producers from uncommitted surplus unit capacity at that unit's variable cost, which typically is much less than the variable and fixed costs of a new resource. Scarcity may drive up the cost of short-term purchases temporarily, but then higher prices incent new development and balance is quickly restored. There is no evidence in the record that forecasted spot market prices exceed a utility's avoided cost over a long period. In theory, there is no reason market prices should be higher than the full cost of new capacity avoided by a QF purchase. If the utility models predict deficiency period avoided costs lower than market prices over a sustained period, then it is more likely that their models (and not the economic theory) are mistaken. The full avoided cost of new capacity has historically been much higher than the market price forecast under Oregon's implementation of PURPA, and the positive spread is likely to continue.[6]

ii. The "price floor "is a permissible refinement to the non-standard price methodology.

The Commission's adoption of a price floor, in Order No. 16-174, lies safely within its discretion. The term "floor" may be misleading, if it implies an arbitrary and rigid limit adopted in derogation of the duty to not exceed avoided cost. In reality, the Commission's floor is no such thing, rather it represents a transparent and well-vetted refinement to the IOUs' avoided cost model.

The Commission's incorporation of the market price forecast into the non-standard avoided cost rate determination amounts to a sound safeguard against black box utility controlled price models generating price signals that are inconsistent with empirical evidence and economic theory. It is, likewise, a safeguard against extreme results under the PGE methodology, which

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[4] Order No. 69, Fed Reg. Vol. 45 No. 38 at 12224 (February 25, 1980)(" The Commission does not believe that the reference in the statute to the incremental cost of alternative energy was intended to require a minute-by-minute evaluation of costs which would be checked against rates established in long term contracts between qualifying facilities and electric' utilities").

[5] *Southern California Edison Company and San Diego Gas & Electric Company*, 70 FERC P 61,215, at p. 61,677 (1995). ["The Commission has not, and does not intend in the future, to second-guess state regulatory authorities' actual determinations of avoided costs (i.e., whether the per unit charges are no higher than incremental costs). Rather, the Commission believes its role is limited to ensuring the process used to calculate the per unit charge (i.e., implementation) accords with the statute and our regulations."]

[6] Compare, e.g., the projected costs of a new combined cycle resource, as calculated by Idaho Power in Table 8 of its July 12 compliance filing in Docket No. UM 1610, with its market-price forecasts documented in Table 2.

has never been fully vetted or applied. It is also a prudent means of preserving reasonable consistency among the three IOU's non-standard avoided costs, given that each IOU uses a different methodology. The result is a hybrid avoided cost methodology that, in the Commission's judgment, accurately reflects avoided cost. The IOUs have not proved otherwise. The IOUs' challenge, therefore, is merely a collateral attack upon a valid methodology with which it does not agree, and therefore is not properly raised in a request for reconsideration.

D. PGE misconstrues the Commission's directives, in Issue 7.

i. Clarification that the price floor adopted in Order No. 16-174 applies to the deficiency period is needed.

PGE and PacifiCorp's *Joint Application* seeks clarification whether the market price floor applies during both the sufficiency and deficiency periods. *Id.* at note 21. However the Commission's intent to apply the floor throughout appears beyond reasonable doubt:
In Order No. 16-174, the Commission summarized ODOE's rationale for the price floor:

> ODOE: ODOE contends it is appropriate for the methodologies to differ across utilities so long as one principle is applied: the floor for non-standard avoided cost prices is the wholesale power price forecast used to set sufficiency period avoided cost prices in standard QF contracts. ODOE asserts that, regardless of a utility's decremental cost of operation, the utility either buys from the wholesale market or sells (or has the opportunity to sell) into the wholesale market. ODOE posits that by paying market prices to a QF, ratepayers are kept whole because the value of power **during periods of deficiency** is what the utility could sell it for or what it would buy it for, regardless of decremental costs of generation.

Order No. 16-174, p. 21. (emphasis added). The Commission noted that "Staff supports ODOE's recommendation that market-based prices be the floor for non-standard avoided cost prices *during either a utility's sufficiency or deficiency period*". *Id.* (emphasis added). The Commission then adopted "ODOE's recommendation supported by staff. . ." The quoted language, above, makes clear that the Commission ordered a floor during both sufficiency and deficiency periods.

PGE's interpretation of the Commission's ruling currently affects the City, as the indicative prices tendered by PGE are lower than the floor prices during the deficiency period. A statement from the Commission addressing note 21 in the *Joint Application* and resolving any confusion would be helpful to all parties.

ii. Clarification that PGE must begin with Base Load standard avoided cost prices when negotiating a non-standard contract with a hydroelectric QF is needed.

In deciding Issue 7, the Commission also held that:

> PGE will continue to use standard contract avoided cost prices as the starting point for price negotiations, with modifications allowed to address the seven factors in 18 C.F.R. § 292.30(e).

Order No. 16-174, p. 22. PGE interprets this language to allow it to decide *which* standard prices to use as the starting point. This interpretation cuts against the language of its standard avoided cost price schedule, Schedule 201, which provides that

> QFs using any resource type other than wind and solar *are assumed to be Base Load QFs*.

Schedule 201, page 4 (June 22, 2016) (emphasis added).

PGE's interpretation of the Commission's ruling affects the City because PGE recently tendered indicative pricing for the City's large hydroelectric project based upon the standard rates for a *solar* (not Base Load) QF. PGE's On-Peak standard rates for solar QFs are about half their On-Peak rates for Base Load. Because PGE has asked for reconsideration and/or clarification of Issue 7, a statement from the Commission addressing PGE's interpretation of the approved PGE methodology for non-standard contracts is procedurally proper. Clarifying the confusion would be helpful to all parties.

E. Publication of the price floor for non-standard contracts benefits everyone.

When the Commission adopted the price floor, it cited the benefit to QF developers of knowing a minimum price:

> We adopt ODOE's recommendation, supported by Staff, to set the floor for non-standard avoided cost prices at the wholesale power price forecast that is used to set sufficiency period avoided cost prices in standard QF contracts. *We are persuaded that the benefit of QF developers understanding the price floor* outweighs the minimal risk described by PacifiCorp that avoided cost prices produced by the PDDRR method would be lower than market.

Order No. 16-174, at 23 (emphasis added).

In order for QF developers to understand the price floor, they must know of its existence and what it is. None of the July 12 compliance filings include publication of the price floor. Rather than requiring each QF seeking a non-standard contract to make a detailed application, and then wait 30 days (or more) to receive prices, it would save utilities, developers, the Commission and its staff time and expense if the IOUs implemented the Commission's directive, above, by publishing the price floor in their non-standard QF contract schedules. The City applied for indicative prices on April 29 and still does not know the floor prices for its non-standard agreement.

IV. Conclusion

The City asks that the Commission deny reconsideration of the price floor, deny the stay, clarify as soon as practicable the portions of Order No. 16-174 discussed in Section III, (D)(i) and D(ii), and require the IOUs to publish the price floor in their non-standard QF schedules. The City thanks the Commission for considering its Comments.

Respectfully submitted this 27th day of July, 2016.

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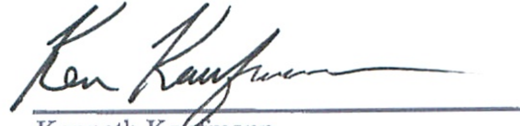

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