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

**UM 1610 PHASE II**

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| In the Matter of PUBLIC UTILITY COMMISSION OF OREGON<br><br>Staff Investigation into Qualifying Facility Contracting and Pricing. | RESPONSE TO PACIFICORP'S AND PGE'S JOINT APPLICATION FOR RECONSIDERATION AND JOINT MOTION TO STAY COMPLIANCE |

## I. Introduction

Portland General Electric Company (PGE) and PacifiCorp ask for reconsideration of the Commission's decision in Order No. 16-174 requiring the utilities to use market prices as a floor for non-standard avoided cost prices. PGE and PacifiCorp also ask for an order staying compliance with the market-price floor until after resolution of the motion for reconsideration.

Staff opposes the request to reconsider the market-price floor prices because the Commission's decision to impose the floor is not based on an error of law (i.e., inconsistent with the Public Utility Regulatory Policy Act (PURPA)), and is not unreasonable. Further, Staff recommends that the Commission not stay compliance with the Commission's order because PGE's and PacifiCorp's arguments are without merit and there is little chance of success on this issue.

### A. Standard of Review

**1. Request for reconsideration.** The Commission may reconsider an order under ORS 756.561 if "sufficient reason therefor is made to appear." The Commission has specified by rule the circumstances in which it will exercise its discretion to reconsider an order. Under OAR 860-001-0720, the Commission may grant reconsideration if the applicant shows that there is:

(a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;



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(b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;

(c) An error of law or fact in the order that is essential to the decision; or

(d) Good cause for further examination of an issue essential to the decision.

**2. Request for stay.**

The Commission has held that it will apply the standard in Oregon's Administrative Procedures Act (APA) when asked to stay an order, even though it is not statutorily required to do so.[1] The standard is found ORS 183.482(3), which provides,

> (3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:
>
> (A) Irreparable injury to the petitioner; and
>
> (B) A colorable claim of error in the order.
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> (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

**B. Response to Request for Reconsideration**

PGE and PacifiCorp assert that reconsideration of the market-price floor is warranted on the ground the market-price floor conflicts with the customer indifference standard of PURPA and is therefore predicated on an error of law essential to the decision.[2] PacifiCorp and PGE also assert that good cause exists for reconsideration because the market price floor will "render moot the very benefits that compelled the Commission to authorize PacifiCorp's usage of the Partial Displacement Differential Revenue Requirement (PDDRR) method."[3]

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[1] *In re Portland General Electric Company* (Docket No. UE 115), Order No. 01-842.

[2] UM 1610 PacifiCorp and PGE Joint Application and Joint Motion 1.

[3] UM 1610 PacifiCorp and PGE Joint Application and Joint Motion1.



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Staff disagrees with PGE's and PacifiCorp's assertion that the Commission's decision to impose a market-based-price floor conflicts with PURPA. The Commission's policy of requiring market prices as a floor for sufficiency-period avoided cost prices dates back to 2005. In 2005, the Commission considered how to compensate qualifying facilities (QFs) for energy and capacity during resource sufficiency periods and resource deficiency periods.

With respect to resource deficiency periods, the Commission required PGE and PacifiCorp to base avoided cost prices on the costs of a Combined Cycle Combustion Turbine (CCCT).[4] With respect to sufficiency-period prices, the Commission rejected PGE's and PacifiCorp's method of basing sufficiency-period avoided cost prices on the variable costs of operating existing generating resources. The Commission required PGE and PacifiCorp to set sufficiency-period avoided cost prices at market, concluding this methodology "embeds the value of incremental QF capacity in the total market-based avoided cost rate."[5]

> Having determined that calculation of avoided costs will be differentiated to reflect a utility's resource position, we next address the more fundamental dispute among the parties regarding the scope and nature of such differentiation. We conclude that the basis for differentiation should not be whether capacity is valued at all, but how it is valued. When in a period of resource sufficiency, PGE and PacifiCorp have historically calculated avoided costs based only on the variable costs of operating existing generating resources. Staff and several other parties, however, challenged the lack of capacity payments to QFs when a utility is in a resource sufficient position, arguing that QF capacity has at least some value to utilities at all times and that this value should be compensated for.
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> When a utility is in a resource sufficient position, we adopt Staff's recommendation that QF capacity be valued based on the market. Although valuation of QF capacity based on the market price of capacity itself has significant appeal, we are concerned about inconsistent evidence regarding the viability of the market for capacity. * * * Consequently, of the two market-based

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[4] *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities,* Order No. 05-584 at 27-28. (The Commission allowed Idaho Power to use a different methodology, the SARS method, that it used in Idaho and allowed Idaho Power to use this methodology for both sufficiency- and deficiency-period prices.)

[5] *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities* (Docket No. UM 1129), Order No. 05-584 at 27-28.



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> valuation methodologies proposed by Staff, we adopt the methodology that values avoided costs when a utility is in a resource sufficient position at monthly on- and off-peak forward market prices as of the utility's avoided cost filing. We agree with Staff that this approach embeds the value of incremental QF capacity in the total market-based avoided cost rate. We find this valuation mechanism to be appropriate given the likelihood that a utility will address probable gaps between increasing demand and actual resources, in the absence of incremental QF capacity, with purchases of energy and capacity on the market. Indeed, we find PGE's recent history of buying significant resources on the market prior to a commitment to build new utility plant to be illustrative. To the extent that a party can provide evidence regarding the market pricing of capacity, however, we remain open to reconsideration of this decision in the next phase of this proceeding.[6]

PacifiCorp's assertion in the request for reconsideration that market-based prices can overcompensate QFs when PacifiCorp's embedded cost differential methodology (PDDRR) shows PacifiCorp could acquire energy more cheaply than at market ignores the Commission's 2005 order on this very issue. The Commission has concluded that avoided cost prices based on the utility's own variable costs do not compensate QFs for avoided capacity. The Commission is authorized under PURPA to require utilities to pay QFs for avoided capacity purchases. Its decision to do so for non-standard avoided cost prices does not conflict with PURPA.

In 2005, the Commission did not impose market-based prices as a floor for deficiency-period prices, but required that avoided cost prices during the utility's deficiency periods be based on the fixed and variable costs of an avoidable resource.[7] The flaw with PacifiCorp's and PGE's argument that market prices will overcompensate QFs when market prices exceed the utilities' costs to operate their generating resources overlooks the fact that the Commission does not allow utilities to base deficiency-period prices on the utility's "cost of generation." Instead, the Commission specifies that avoided costs should be based on the next avoidable market

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[6] *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities* (Docket No. UM1129), Order No. 05-584 at 27-28.

[7] *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities* (Docket No. UM1129), Order No. 05-584 at 27-28.



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purchase or the fixed and variable costs of the next avoidable resource. The utilities' complaint that market prices may exceed the costs of their displaceable generation resources is irrelevant.

PacifiCorp appears to not understand the Commission's rationale underlying its decision to allow PacifiCorp to use the PDDRR methodology. The Commission has not authorized PacifiCorp to ignore the bedrock Commission policy that avoided cost prices should compensate QFs for avoided capacity during both periods of resource sufficiency and deficiency. By allowing PacifiCorp to use the PDDRR methodology, the Commission intended to facilitate the determination of avoided cost prices that can take into account specific characteristics of the QF (the seven factors) as allowed by PURPA. In Order No. 16-174 the Commission stated,

> We approve PacifiCorp's request to use its PDDRR method going forward. We agree this GRID model-based method more accurately values energy and capacity on PacifiCorp's system by taking into account the unique characteristics (including location, delivery pattern, and capacity contribution) of each QF.[8]

Imposing a market-price floor for avoided costs during periods of resource sufficiency and deficiency ensures that QFs will always receive compensation for avoided capacity given that capacity value is embedded in such prices. While avoided cost prices based on the fixed and variable costs of the next avoidable resource should compensate QFs for capacity, the floor imposed by the Commission will provide insurance that a capacity payment will be made in the event the utility's methodology would otherwise allow the utility to avoid paying the QF for avoided capacity acquisitions.

### C. Response to Motion to Stay

Staff recommends that the Commission deny PGE's and PacifiCorp's request to stay compliance with the market-based price floor. For the reasons stated above, there is no colorable claim of error. Further, compliance with the order will not cause irreparable harm. The market-based price floor is not unlawful; it is an alternate way of valuing avoided energy and capacity acquisitions. The fact that calculating avoided cost prices under this alternate policy may result

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[8] Order No.17-164 at 23.



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in different (but still legal) avoided cost prices than would be obtained under the Commission's previous policy would not necessarily "irreparably *harm*" the utilities or their customers.

**D. Conclusion**

Staff opposes PGE and PacifiCorp's request to reconsider imposition of a market-based price floor for non-standard sufficiency-period avoided cost prices and their request to stay their compliance with this portion of the order.

DATED this 26th day of July, 2016.

Respectfully submitted,

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