

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1610

In the Matter of)
)
PUBLIC UTILITY COMMISSION OF) OREGON DEPARTMENT OF
OREGON,) ENERGY'S PRE-HEARING
) MEMORANDUM, PHASE II
Staff Investigation into Qualifying)
Facility Contracting and Pricing)

1 **Introduction**

2 The Oregon Department of Energy (ODOE or Department) submits this Pre-Hearing Brief in
3 accordance with the March 26, 2015 Administrative Law Judge (ALJ) Ruling issued in this
4 docket. The Department addressed Issues Number 1, 3, 4, 5, 6, 7, and 9 in this docket. In
5 summary:

- 6 • ODOE's position on Issue Number 1 is the qualifying facility (QF) should own the Green
7 Tags (also known as renewable energy certificates, or RECs) during the last five years of
8 the fixed-price power purchase agreement (PPA) when prices paid to the QF are at
9 market.
- 10 • ODOE's position on Issues Number 3 and 4 is that the Oregon Public Utility Commission
11 (OPUC or Commission) should revise the methodology for determining the capacity
12 contribution for renewable generation in both standard renewable and the standard non-
13 renewable avoided cost prices using the method proposed by the OPUC Staff.
- 14 • ODOE's position on Issue Number 5 is that the Commission should require electric
15 companies to file their proposed avoided cost prices with their integrated resource plans

1 (IRPs), consistent with the minimum filing requirements proposed by OPUC Staff in this
2 docket with the additions proposed by ODOE. The Department has revised its original
3 position on this issue in response to concerns raised by other parties; this brief elaborates
4 upon the proposal ODOE presented in reply testimony. Parties would be encouraged to
5 comment on the appropriateness of the avoided cost prices and associated assumptions in
6 the IRP docket along with their comments on the proposed action in the IRP. At the end
7 of the docket the Commission would direct the company to make revisions, if any, to the
8 avoided cost filing in its acknowledgement order in the IRP docket. The approval process
9 for the avoided cost prices would not change; it would remain a contested case docket,
10 while the docket for the IRP/avoided cost filing would remain a comment-type docket
11 rather than a contested case docket.

- 12 • ODOE's position on Issue Number 6 is that a forecast of forward wholesale power prices
13 is a reasonable estimate of avoided costs during the sufficiency period as long as the
14 company's power purchasing behavior is consistent with the type of prices being
15 forecast.
- 16 • ODOE's position on Issue Number 7 is that the Commission should establish wholesale
17 power prices as the floor for calculating non-standard avoided cost prices. This floor
18 should be applied to all three electric utilities operating in Oregon.
- 19 • ODOE's position on Issue Number 9 is that this issue should be moved to Phase III of
20 this docket, consistent with the OPUC Staff position. The Department of Justice needs to
21 weigh in on the legal issues raised by PacifiCorp before moving forward.

1 **ISSUE NUMBER ONE:**

2 **WHO SHOULD OWN THE GREEN TAGS DURING THE LAST FIVE YEARS OF A**
3 **20-YEAR FIXED PRICE PPA DURING WHICH PRICES PAID TO THE QF ARE**
4 **AT MARKET?**

5
6 The Department agrees with the OPUC Staff position that

7 *QFs are not compensated for RECs when they receive market-based prices in*
8 *the last five years of a standard contract. If QFs are not compensated for the*
9 *RECs, they should not be required to transfer ownership of RECs to utilities,*
10 *even if the utilities are resource deficient.¹*
11

12 The utilities in this case have not presented a reasonable justification for why they
13 should be given something they have not paid for. To do so would violate the underlying
14 principles of avoided cost under the federal PURPA statute. If utilities pay the QFs the
15 avoided cost for the power, then utilities are made whole. If utilities are then given the RECs
16 with no compensation to the QF, the utilities are made more than whole.

17
18 **ISSUE NUMBER THREE:**

19 **SHOULD THE COMMISSION REVISE THE METHODOLOGY APPROVED IN**
20 **ORDER NO.14-058 FOR DETERMINING THE CAPACITY CONTRIBUTION**
21 **ADDER FOR SOLAR QFs SELECTING STANDARD RENEWABLE AVOIDED**
22 **COST PRICES?**

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24 Yes. The Department agrees with the OPUC Staff that there is a flaw in the methodology
25 which results in double-discounting and the QF is, in the case of solar resources, severely
26 undercompensated for avoided capacity. The flaw is clearly explained in Staff's response
27 testimony in Phase I² and opening testimony in Phase II on this subject.³ The Department

¹ Staff/700, Andrus/2; lines 3-7

² Staff/400, Andrus/4-5

³ Staff/500, Andrus/16-17

1 continues to support Staff's proposed method Option 1, as outlined by Staff in Phase I,⁴ and as
2 demonstrated by ODOE testimony in Phase II.⁵

3 The utilities have not made sound arguments against correcting the flaw. The utilities
4 have claimed that the revised methodology results in payments to the QFs for capacity regardless
5 of output during on-peak hours. As Staff explained in reply testimony for Phase II, this is simply
6 not the case.⁶ The revised methodology makes a two-step calculation, first of capacity
7 contribution in an annual dollars-per-kW amount, then converts that into a per-MWh payment
8 rate. The resulting rate is an accurate payment to the QF for avoided capacity cost which is paid
9 to the QF for its output during on-peak hours.

10
11 **ISSUE NUMBER FOUR:**
12 **SHOULD THE CAPACITY CONTRIBUTION CALCULATION FOR THE**
13 **STANDARD NON-RENEWABLE AVOIDED COST PRICES BE MODIFIED TO**
14 **MIRROR ANY CHANGE TO THE SOLAR CAPACITY CONTRIBUTION**
15 **CALCULATION USED TO CALCULATE THE STANDARD RENEWABLE**
16 **AVOIDED COST PRICE?**

17
18 Yes. The double discounting error occurs in the capacity payment adjustments adopted in
19 Order No. 14-058 for both the standard renewable and standard non-renewable avoided costs.

20 ODOE refers to its opening testimony for clarification between capacity contribution and
21 capacity payment rate:

22 *Idaho Power has correctly noted that, under Staff's revised method, a solar QF*
23 *delivering power to Idaho Power will receive a higher per-MWh capacity payment rate*
24 *than a baseload QF. But that is not the same as receiving more than avoided cost. A*
25 *solar QF will not receive more than avoided cost. Under Staff's revised method, the total*
26 *annual capacity payments to a solar QF will always be less than the total capacity*
27 *payments to a baseload QF even if the solar capacity payment rate is higher.*

28 *As long as the capacity value is calculated appropriately, Staff's proposed*
29 *revised method will provide the most accurate estimate of capacity costs actually avoided*

⁴ Staff/401, Andrus/1

⁵ Exhibit ODOE/801, Broad/1

⁶ Staff/700, Andrus/4

1 The Department agrees that a lengthy contested case process after the IRP
2 acknowledgement order could unduly delay implementation of refreshed avoided costs. Most
3 importantly, it might require the Commission to immediately re-decide the sufficiency period for
4 both renewable and non-renewable resources, as proposed by OPUC Staff.¹⁰

5 In the current IRP process, the Commission does not rule on the key assumptions, except
6 implicitly, in deciding whether to acknowledge the action items proposed in the IRP. This
7 element of the IRP process, combined with the lack of a simultaneous filing of avoided cost
8 prices with the IRP, discourages parties from commenting on the assumptions in the IRP docket.

9 If the deficiency dates for renewable and non-renewable generation are outside the four-
10 year window of action items, the Commission's acknowledgement order does not address the
11 deficiency date at all. Due to the interaction between the IRP docket and the filed avoided cost
12 prices, there currently is no reasonable opportunity for parties to contest the key assumptions that
13 drive the avoided cost prices.

14 In its opening testimony, ODOE proposed for the Commission to open two parallel
15 dockets in order to better address issues related to setting avoided cost prices, an IRP docket and
16 an avoided cost docket that would run simultaneously and conclude around the same time.¹¹ In its
17 reply testimony, ODOE made changes to its original proposal in response to the concern by
18 PacifiCorp about bifurcating the Commission decision-making in the IRP regarding avoided cost
19 issues and deficiency dates.¹² The Department now proposes¹³ a two part process to address
20 issues related to setting avoided cost prices. The first step would be to use the existing IRP

¹⁰ Staff/503, Andrus/1

¹¹ ODOE/700, Carver/5

¹² "***Q. Do you support ODOE's suggestion to limit the IRP acknowledgement order to focus only on assumptions within four years of the IRP filing? A. No. As stated above, near-term decisions also depend on the long-term outlook. ODOE's suggestion appears to further bifurcate the IRP from an avoided costs process, which would lessen the value of the IRP in general.***" PAC/1500, Drennan/3; lines 10-14

¹³ ODOE/1100, Carver/4

1 dockets to encourage comments on the avoided cost prices that would be filed with the IRPs. The
2 avoided cost filing, simultaneous with the IRP filing, should include the minimum filing
3 requirements as proposed by OPUC Staff¹⁴ with amendments proposed by the Department.¹⁵ This
4 first step would allow parties to do discovery on avoided cost issues and file comments. The
5 Commission would not be required to opine on these issues, but the comments could influence its
6 decisions on whether to acknowledge action items related to these issues. As is currently the case
7 with the IRP docket, the proposed IRP/avoided cost docket would be a comment-type docket, not
8 a contested case docket.

9 As with the current process, there would be a second step where the utility makes its
10 avoided cost filing. As noted by OPUC Staff¹⁶ under OAR 860-029-0080:

11 *Any standard rates filed under OAR 860-029-0040 [Rates for Purchases from QFs]*
12 *shall be subject to suspension and modification by the Commission.*
13

14 The Department is not proposing to change this rule. However, the Department suggests that the
15 Commission encourage parties to limit discovery regarding avoided cost issues to the IRP docket
16 or to one round of discovery with follow-up questions in the avoided cost docket. It could be
17 quick and straightforward for parties that filed comments in the IRP docket to refile those
18 comments as expert testimony in a contested case about avoided cost prices. While the
19 Commission cannot exclude new types of issues in the avoided cost docket that were not filed as
20 comments in the IRP docket, it can encourage parties to limit the discovery period in the avoided
21 cost docket to one round of requests with follow-up questions.

22 Combining the IRP and avoided cost issues in a comment-type docket would expedite a
23 contested case in an avoided cost docket. Most importantly, the proposed two-step process would

¹⁴ Staff/503, Andrus/1-2

¹⁵ ODOE/900, Carver/8

¹⁶ Staff/500, Andrus/23; lines 26-28

1 allow the Commission to be consistent in its acknowledgement decisions on the action items and
2 its setting of avoided costs rates. As the Commission prepares its IRP order, it would already be
3 aware of the implications that any IRP action items have for avoided costs as the Commission
4 decides to whether or not to acknowledge those action items.

5 ODOE is open to other changes to the process to facilitate a quick conclusion to the
6 contested-case avoided cost docket; for example, perhaps the avoided cost docket could be
7 opened before the close of the IRP docket to establish the issues list and clarify the discovery
8 process.

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ISSUE NUMBER SIX:

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**DO MARKET PRICES USED DURING THE RESOURCE SUFFICIENCY PERIOD
12 SUFFICIENTLY COMPENSATE FOR CAPACITY?**

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15 The Department's position on Issue Number 6 is that a forecast of forward wholesale power
16 prices is a reasonable estimate of avoided costs during the sufficiency period as long as the
17 company's power purchasing behavior is consistent with the type of prices being forecast. The
18 Department examined the testimony by the three electric companies related to its position on this
19 issue and found no objections.

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Regarding the Joint QF Parties testimony of Kevin C. Higgins¹⁷, sponsored by the
Renewable Energy Coalition (REC), the Community Renewable Energy Association
(CREA), OneEnergy, and Obsidian Renewables, LLC, the Department takes no position on
whether the cost of retrofitting existing plants with air pollution controls has a role in setting
avoided cost in the case of PacifiCorp. Whether or not to do so would depend upon the
particulars of the case. It is not appropriate to try and resolve that proposal in this generic
policy docket. The costs and issues should be argued in an IRP or avoided cost docket for a

¹⁷ Joint QF Parties/100, Higgins

1 single electric company. These issue is particularly germane to an IRP/avoided cost docket as
2 proposed by the Department in Issue 5 above.

3 A hypothetical example of an economic analysis to demonstrate that an IRP action item
4 to retrofit an existing power plant is relevant in setting avoid costs is the following. Such an
5 action item might have a present value of operating and capital costs greater than the
6 wholesale power price. Still, the Commission might acknowledge such an action item
7 because it will likely delay the subsequent acquisition of a still more expensive new power
8 plant. In this case, the date of the retrofitting might establish a new deficiency date, but for a
9 resource with a cost intermediate between wholesale power prices and a new combined-cycle
10 combustion turbine. Note that this example would require redefining the deficiency date as
11 the next capital investment related to power supply, not the next combined-cycle combustion
12 turbine acquisition.

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**ISSUE NUMBER SEVEN:
WHAT IS THE MOST APPROPRIATE METHODOLOGY FOR CALCULATING NON-
STANDARD AVOIDED COST PRICES? SHOULD THE METHODOLOGY BE THE
SAME FOR ALL THREE ELECTRIC UTILITIES OPERATING IN OREGON?**

20 The Department’s position on this issue is that the floor for non-standard avoided
21 costs should be the wholesale power price forecast used to set avoided costs in standard QF
contracts. OPUC Staff agrees with this recommendation.¹⁸

¹⁸ “*Q. ... Does Staff agree with this [ODOE’s] recommendation? A. Yes. As ODOE notes, utilities used to utilize decremental generating costs to determine standard avoided cost prices during sufficiency periods. In Order No. 05-584, the Commission decided that such prices did not sufficiently compensate QFs for avoided capacity and ordered utilities to value ‘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.’ Although that order applied to the calculation of standard avoided cost prices, the same reasoning supports the use of wholesale prices as a floor in the calculation of non-standard rates.*” Staff/700, Andrus/11-12

1 PacifiCorp asserts that

2 *[T]he benefit of using a production dispatch model is that system resource*
3 *constraints are accounted for, such as transmission capacity, rather than*
4 *making the simplifying assumption that QF energy **always** displaces market*
5 *purchases or facilitates additional market sales during the sufficiency*
6 *period.*¹⁹ [emphasis in original]
7

8 PacifiCorp does not clarify how or why transmission would constrain Oregon QF generation

9 that is not in a load pocket from being resold into the Mid-Columbia wholesale power hub.

10 That market is quite deep and liquid. There may be times when the wholesale price is low or

11 even negative but that effect should be included in the wholesale price forecast.

12 If the power is in a load pocket where QF generation does not exceed minimum loads,

13 displaced need for generation should free up other generation to be sold. If the QF generation

14 is in a load pocket and it exceeds the minimum load, then the purchased third-party

15 transmission would move the QF power to the Mid-Columbia wholesale market hub.

16 The Department's position is that the wholesale floor for non-standard avoided costs

17 should be applied to all three electric utilities operating in Oregon.

18
19 **ISSUE NUMBER NINE:**

20 **HOW SHOULD THIRD-PARTY TRANSMISSION COSTS TO MOVE QF OUTPUT**
21 **OUT OF A LOAD POCKET TO LOAD BE CALCULATED AND ACCOUNTED**
22 **FOR IN THE STANDARD CONTRACT?**
23

24 ODOE concurs with the proposal by Staff to move Issue 9 to Phase III:

25 *Staff believes that all the parties need sufficient time to investigate*
26 *PacifiCorp's proposed transmission cost allocation methodology and to*
27 *evaluate the feasibility of other options proposed in this case. Staff*
28 *recommends the Commission defer this issue to Phase III of this investigation*
29 *for further review.*²⁰
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¹⁹ PAC/1400, Dickman/6; lines 21-24

²⁰ Staff/700, Andrus/13; lines 12 -16

1 In addition, the Department wishes to emphasize to the Commission that the current
2 practice of assigning costs of transmission service through an addendum to the standard
3 contract is at odds with the purpose of a standard contract, in that the cost and methodology
4 for determining those costs are negotiated. Small QFs do not have the resources to get
5 consistently fair treatment in this type of negotiation, which is the reason the Commission
6 adopted standard contracts for the purchase of QF power.

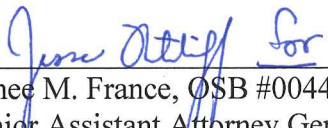
7 ODOE continues to recommend that the Commission adopt changes to the standard
8 contract which result in clear choices for the QF with regards to transmission service, ensure
9 that utility ratepayers are protected from paying transmission costs which are the
10 responsibility of the QF, and make clear what those costs are over the term of the contract.

11 DATED this 2nd day of September, 2015.

12
13 Respectfully submitted,

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