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September 18, 2017

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PACIFICORP, dba PACIFIC POWER
Investigation to Examine PacifiCorp, dba Pacific Power's Non-Standard Avoided
Cost Pricing
Docket No. UM 1802

Dear Filing Center:

Please find enclosed the Opening Brief of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1802

In the Matter of)
)
PUBLIC UTILITY COMMISSION OF)
OREGON,)
)
Investigation to Examine PacifiCorp, dba)
Pacific Power's Non-Standard Avoided Cost)
Pricing.)

OPENING BRIEF

OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

September 18, 2017

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
I. INTRODUCTION	1
II. LEGAL STANDARD	2
III. ARGUMENT.....	2
A. The Commission Should Revisit the Calculation of Avoided Cost Pricing when Requisite Clarity Is Obtained	2
B. Consideration in this Docket Should Not Be Needlessly Constrained.....	5
C. The Company’s Positions on New Resources Are Inconsistent and Unsound.....	6
IV. CONCLUSION.....	8

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) respectfully submits this Opening Brief to the Public Utility Commission of Oregon (“OPUC” or the “Commission”). This proceeding was initiated as an investigation designed to examine two issues: 1) whether PacifiCorp’s (the “Company”) non-standard avoided cost pricing should include a renewable price option; and 2) how such a renewable price option should be calculated, if available.^{1/}

ICNU does not understand any controversy to exist on the first issue—all parties seem to agree that a non-standard renewable price option should be available, in some form. Significant disagreement surrounds the second issue, however, as to *how* a renewable non-standard avoided cost pricing option should be calculated. ICNU firmly supports a calculation methodology under this option which does not burden cost of service ratepayers with pricing which exceeds PacifiCorp’s actual avoided costs.

To properly identify such methodology, the Commission must first determine when any qualifying facility (“QF”) is truly providing the Company with avoided costs associated with the *renewable* attributes of a QF resource. In short, if QFs are not needed for Oregon renewable portfolio standard (“RPS”) purposes, then those QFs should not receive avoided cost pricing that assumes that RPS costs are being avoided. Rather, QF power that merely displaces cost-effective renewable resource acquisitions, as the Company represents, should be priced to reflect the value of power that would otherwise have been used. A renewable price option calculated to exceed such value would be contrary to the Public Utility Regulatory Policies Act (“PURPA”) and Commission precedent.

^{1/} Re OPUC, Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 16-429 (Nov. 9, 2016).

II. LEGAL STANDARD

As the Commission recently reaffirmed, the OPUC’s “role in implementing PURPA requires a balancing of interests.”^{2/} This includes the protection of ratepayer interests by “ensuring that electric utilities ‘purchase power from QFs at rates that are just and reasonable to the utility’s customers, in the public interest, and ... that are *not more than avoided costs.*”^{3/} In fact, fully avoided costs comprise the “maximum rate” that can be authorized under PURPA.^{4/} This is consonant with “Congress’s desire to promote [QFs] while not burdening ratepayers,” by “recognizing that ratepayers should be indifferent to the source of power and that if rates are set at the utility’s avoided costs, ratepayers will pay neither more nor less than they otherwise would have.”^{5/} Accordingly, the Commission has taken decisive action, in multiple contexts, “to protect ratepayers from potential significant cost impacts due to ... prices that exceed [a utility]’s avoided costs.”^{6/}

III. ARGUMENT

A. The Commission Should Revisit the Calculation of Avoided Cost Pricing when Requisite Clarity Is Obtained

Bluntly, the Commission has been placed in a conundrum which, while not necessarily the fault of any party, nevertheless appears presently insoluble—at least, in the sense of reaching a final resolution which is just, reasonable, and sustainable. As ICNU witness

^{2/} Re Portland Gen. Elec. Co., Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities, Docket No. UM 1854, Order No. 17-310 at 7 (Aug. 18, 2017).

^{3/} Id. (quoting Docket No. UM 1610, Order No. 14-058 at 3 (Feb. 24, 2014) (citing Re OPUC, Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 6 (May 13, 2005); U.S.C. § 824a-3(a)-(b); 18 C.F.R. § 292.101 *et seq.*)) (emphasis added).

^{4/} Am. Paper Inst. v. Am. Elec. Power Corp., 461 U.S. 402, 413, 416-18 (1983).

^{5/} Indep. Energy Producers Ass’n v. Cal. Pub. Utils. Comm’n, 36 F.3d 848, 858 (9th Cir 1994) (citing 18 C.F.R. § 292.304(d); Administrative Determination, IV Federal Energy Reg. Comm’n Rep. (CCH) ¶ 32,457, at 32,158).

^{6/} Docket No. UM 1854, Order No. 17-310 at 7.

Bradley Mullins testified, the Commission must calculate a renewable non-standard avoided cost pricing option by means of “pricing that accurately reflects the presence of displaced ‘needs.’”^{7/} The conundrum, however, is that the Commission has yet to determine the “needs” that would be displaced by QFs, such that avoided cost pricing could be properly calculated.

This dilemma is attributable to PacifiCorp’s 2017 Integrated Resource Plan (“IRP”) which, according to the Company, includes renewable resource acquisition plans that raise “avoided cost implications where a utility is pursuing near-term capacity investments that are not driven by reliability, RPS, or load-service *needs*.”^{8/} Indeed, new wind resource action items in the 2017 IRP have led the Company, in this proceeding, to provide an “... updated evaluation of how cost-effective renewable resources, rather than renewable resources specifically needed to comply with Oregon’s renewable portfolio standard (RPS) ... should be considered when developing renewable non-standard avoided cost pricing.”^{9/} Thus, what had begun as an “expedited investigation,”^{10/} with opening Company testimony filed in January 2017, has devolved into a process threatening to span almost an entire year, including a second round of opening PacifiCorp testimony filed in July. The effective “reboot” of this entire docket has ultimately resulted in more questions raised than answered, particularly as to how alleged “cost-effective renewable resources” should be valued for avoided cost pricing purposes.

Unfortunately, these newly raised questions are not susceptible to principled resolution for months to come. As Mr. Mullins explained:

The problem at this juncture is that we do not yet know ultimately what will transpire with the wind resources in the Company’s 2017 IRP. It may be that all of

^{7/} ICNU/200, Mullins/3:4-5.

^{8/} PAC/200, Lockey/5:1-3 (emphasis added).

^{9/} Id. at 1:23-2:3.

^{10/} Docket No. UM 1610, Order No. 16-429 (Nov. 9, 2016).

the state Commissions reject those resources. Or, we could be placed in the awkward situation of having some jurisdictions accept the resources, with others rejecting them. *The scenario that needs to be guarded against is approving avoided cost prices based on resources that are never actually approved or accepted.*^{11/}

According to the current 2017 IRP schedule, the Commission will not render an acknowledgment decision on relevant IRP action items until December 5, 2017, at the earliest.^{12/} Yet, even assuming the Company’s new wind resources are acknowledged, “it is not yet determined at what price the Company will be able to acquire the new wind resources, as the request for proposal (“RFP”) process associated with the new wind resources will not be completed for some time.”^{13/} That is, even by generous estimates in the Company’s most recent RFP scheduling proposal—assuming, perhaps more generously still, that intensive RFP processes in other states do not derail the effort entirely—new wind resource pricing could not be accurately determined *prior to mid-April 2018.*^{14/}

Consequently, ICNU recommends, until such questions necessary to calculate avoided costs for new wind resources can be answered, “... that the Commission keep the current pricing stream in place for renewable fixed avoided cost prices, with a 2028 RPS deficiency period.”^{15/} Alternatively, as Mr. Mullins has suggested, the Commission could “require QF resources to bid into the RFP.”^{16/} But, in addition to the potential burden this solution would place upon QFs,^{17/} the Commission has subsequently granted a mere “limited approval” to the Company’s RFP, with final approval conditioned upon relevant IRP action item

^{11/} ICNU/200, Mullins/4:2-7 (emphasis added).

^{12/} Re PacifiCorp, 2017 IRP, Docket No. LC 67, Prehearing Conference Memorandum (Aug. 16, 2017).

^{13/} ICNU/200, Mullins/4:8-10.

^{14/} Re PacifiCorp, Application for Approval of Final Draft 2017R Request for Proposals, Docket No. UM 1845, PacifiCorp’s Final Draft 2017R RFP at 9 (Aug. 4, 2017).

^{15/} ICNU/200, Mullins/4:16-17.

^{16/} Id. at 4:11.

^{17/} Id. at 4:13-15.

acknowledgment. Since that acknowledgment will not be forthcoming for several months, if at all, requiring QFs to participate in a highly uncertain RFP process now seems far from optimal.

B. Consideration in this Docket Should Not Be Needlessly Constrained

ICNU appreciates the likely good intentions behind Staff’s concern, “that the question of whether a renewable resource is procured because it is the most cost-effective, or procured to meet the RPS is out of scope in Docket No. UM 1802.”^{18/} As Staff also recognizes, however, “[t]o accomplish the objective of *this docket*,” certain “issues must be addressed,” which according to Staff’s own testimony include “how to calculate the avoided cost and capacity of the deferred resource as applied to the individual QF.”^{19/}

Consistent with this objective, and as Mr. Mullins has explained, “... to reasonably determine the Company’s true avoided costs, a determination must first be made as to QF pricing that accurately reflects the presence of displaced needs ... which, in turn, implicates the circumstances presented by the Company’s 2017 Integrated Resource Plan (“IRP”) action plan, including near-term capacity investments that are not driven by reliability, RPS, or load-service needs.”^{20/} This “first” determination on displaced needs, itself dependent on IRP process, plainly demonstrates the unavoidable conundrum that the Commission and all other parties are in. Therefore, any attempt to constrain the “scope” of UM 1802 analysis—whether through express or practical exclusion of necessary, predicate determinations—does nothing to solve the dilemma.

^{18/} Staff/200, Andrus/4:5-7.

^{19/} Id. at 4:14-19 (emphasis added).

^{20/} ICNU/300, Mullins/2:1-9 (quotation marks and emphasis omitted).

Finally, the fact that the Commission has decided to *prospectively* address, as Staff points out, “[t]he avoided cost implications where a utility is pursuing near-term capacity investments that are not driven by reliability, renewable portfolio standard (RPS), or load-service needs,”^{21/} also does not help solve the conundrum presented in this docket. Indeed, the inevitable period that will be necessary to allow the Commission to determine these “implications,” either through IRP or other proceedings, only reinforces the propriety of ICNU’s recommendation—i.e., to revisit the calculation of avoided cost pricing, *once* requisite clarity is obtained.^{22/}

C. The Company’s Positions on New Resources Are Inconsistent and Unsound

In the final round of testimony in this proceeding, PacifiCorp agreed with ICNU “that the 2021 Wyoming wind resources should not be used to establish avoided cost prices.”^{23/} Notwithstanding, Company witness Daniel MacNeil then offered a qualifying statement acutely in tension with, if not directly contrary to, his statement of accord with ICNU. Specifically, Mr. MacNeil explains: “I disagree with ICNU’s argument that the Wyoming wind resources should be excluded from the avoided cost calculation because they may never be built.”^{24/}

Even assuming there is a narrow, semantic distinction to be drawn between not using unacknowledged IRP resources to “establish” avoided cost prices, while simultaneously including them for “calculation” purposes, the Company’s proposal is still inconsistent and unsound. For starters, Mr. MacNeil argues that, “for avoided costs *we must assume* that the

^{21/} Staff/200, Andrus/5:12-14 (quoting Re PacifiCorp, Investigation into Schedule 37 – Avoided Cost Purchases from QFs of 10,000 kW or Less, Docket No. UM 1794, Order No. 17-239 at 3 (July 7, 2017)).

^{22/} See ICNU/200, Mullins/4:18-19 (“Once there is greater clarity surrounding the new wind in the Company’s IRP, the pricing stream may be revisited at that time”).

^{23/} PAC/400, MacNeil/16:5-9.

^{24/} Id. at 16:9-11.

resources in the preferred portfolio will be acquired.”^{25/} Elsewhere, however, Mr. MacNeil makes a completely contrary point, in strongly protesting against an implication that the Company is actually assuming such acquisition with any semblance of certainty: “PacifiCorp *never* claimed that it is pursuing these resources at any cost or irrespective of market or resource developments.”^{26/}

Indeed, the inconsistency and equivocation reflected within PacifiCorp’s own position on new resources would render any present Commission determination—pertaining to avoided cost calculations factoring such resources—as both thoroughly premature and imprudent. As Mr. MacNeil concedes: “If, however, the Commission ultimately does not acknowledge the 2017 IRP, or makes any specific findings related to the Wyoming wind resources in either the 2017 IRP or RFP docket, *PacifiCorp will modify its treatment of the resources in the avoided cost calculations as required by the Commission.*”^{27/}

Plainly, the Company contemplates that near-term Commission orders could modify any determinations in this proceeding, through decisions in either or both the pending IRP or RFP dockets. This acknowledged uncertainty only further supports the soundness of ICNU’s recommendation, to wait for needed clarity before rushing into a preliminary decision which could change multiple times in the coming year: “Once there is greater clarity surrounding the new wind in the Company’s IRP, the pricing stream may be revisited at that time.”^{28/}

^{25/} Id. at 16:14-15 (emphasis added).

^{26/} Id. at 15:10-12 (emphasis added).

^{27/} Id. at 12:1-4 (emphasis added).

^{28/} ICNU/200, Mullins/4:18-19.

IV. CONCLUSION

For the reasons stated above, in addition to further testimonial arguments presented by Mr. Mullins in this proceeding, ICNU respectfully requests that the Commission adopt ICNU's briefing recommendations and keep the current pricing stream in place for renewable fixed avoided cost prices, with a 2028 RPS deficiency period. The calculation of non-standard avoided cost pricing may be appropriately and adequately revisited, once greater clarity on relevant IRP and RFP issues, as well as questions over renewable resource "needs," have been fully addressed. Until then, even well-meaning attempts to reach a preliminary determination are likely to unnecessarily burden ratepayers, via pricing that could exceed actual avoided costs by a significant margin.

Dated this 18th day of September, 2017.

Respectfully submitted,

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