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May 2, 2016

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 the Northwest and Intermountain Power Producers Coalition
Petition for Temporary Rulemaking and Investigation into PacifiCorp's
2016 Requests for Proposal
Docket Nos. UM 1771 and AR 598

Dear Filing Center:

Enclosed for filing in the above-referenced dockets, please find the Comments of the Industrial Customers of Northwest Utilities.

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

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1771

AR 598

In the Matter of)
)
Northwest and Intermountain Power Producers) **COMMENTS OF THE INDUSTRIAL**
Coalition) **CUSTOMERS OF NORTHWEST**
) **UTILITIES**
Petition for Temporary Rulemaking and)
Investigation into PacifiCorp’s 2016 Requests)
for Proposal)
_____)

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits these Comments on the Northwest and Intermountain Power Producers Coalition’s (“NIPPC”) Petition for a Temporary Rulemaking and Investigation into PacifiCorp’s 2016 Requests for Proposal (“Petition”). ICNU neither supports nor opposes NIPPC’s requested relief in its Petition, but does agree with a number of the issues NIPPC raises. Fundamentally, ICNU considers PacifiCorp’s renewable requests for proposals (“RFPs”) to be imprudent, and if they result in the acquisition of new resources or the purchase of additional renewable energy credits (“RECs”), customers should not bear those costs.

II. BACKGROUND

PacifiCorp has recently issued two renewable RFPs, one “seeking cost-competitive bids for renewable energy resources that can be used to meet state renewable portfolio standard (RPS) requirements under the applicable laws and regulations of California,

Oregon, and/or Washington,” and another for the purchase of RECs to meet the same states’ RPS requirements.^{1/} Issued on April 11, 2016, the RFPs implement the strategy the Company identified less than two weeks earlier in its 2015 integrated resource plan (“IRP”) update in Docket No. LC 62. PacifiCorp submitted this IRP update for informational purposes only and did not seek Commission acknowledgement of its action plan.^{2/} The update also was not subject to the rigorous stakeholder process associated with its 2015 IRP. Despite the fact that this update shows that the Company does not need RECs for Oregon’s RPS compliance until at least 2025,^{3/} the Company stated that it could meet future RPS obligations beyond 2025 by purchasing RECs in the near term, and that it had identified “time-sensitive renewable resource acquisition opportunities.”^{4/}

By “time-sensitive,” PacifiCorp appeared to be referring to the gradual phase-out of production tax credits (“PTCs”) beginning in 2017.^{5/} With respect to its REC purchase strategy, recent passage of Senate Bill (“SB”) 1547 changes the state’s REC banking provisions such that currently banked RECs and RECs generated from qualifying resources purchased or built before 2022 can be banked indefinitely.^{6/} All other RECs have a 5-year life.^{7/} Thus, the primary justifications for the Company pursuing the renewable RFPs are that they allow PacifiCorp to acquire RECs it can bank forever and enable it to take advantage of PTCs before

^{1/} The 2016R Renewable RFP and the 2016 REC RFP are available at:
<http://www.pacificorp.com/sup/rfps.html>.

^{2/} Docket No. LC 62, 2015 IRP Update, PacifiCorp Cover Letter (Mar. 31, 2016).

^{3/} *Id.* at 54.

^{4/} *Id.* at 54-55.

^{5/} *Id.* at 55.

^{6/} SB 1547 § 7.

^{7/} *Id.*

they are currently set to expire.^{8/} SB 1547 also requires the Commission to adopt rules “[p]roviding for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity.”^{9/}

III. COMMENTS

NIPPC’s Petition requests that the Commission implement a rule “that prevents a utility from owning or having an ownership interest in renewable energy generating resources, other than PURPA contracts and currently owned resources, until the Commission adopts permanent competitive bidding rules.”^{10/} It also requests that the Commission open an investigation into the Company’s renewable RFPs to ensure that they adhere to the Commission’s existing competitive bidding guidelines and to review the Company’s approach to RPS implementation.^{11/}

ICNU does not oppose NIPPC’s requests in its Petition, although it notes that PacifiCorp has already agreed to refile its 2016 Renewable Portfolio Implementation Plan in July of this year in order to address issues of SB 1547 compliance.^{12/} This proceeding could serve as a forum for addressing the Company’s approach to RPS implementation going forward.

Additionally, ICNU agrees with NIPPC that PacifiCorp’s issuance of the renewable RFPs is imprudent and has the potential to harm customers. A temporary rulemaking that delays resource procurement under these RFPs at least until the Commission issues final competitive bidding rules could help protect customer interests. If the Commission declines to

^{8/} See 2016R RFP; 2016 REC RFP; 2015 IRP Update at 55.

^{9/} SB 1547 § 6(4)(d).

^{10/} NIPPC Petition at 12.

^{11/} NIPPC Petition at 14.

^{12/} Docket No. UM 1754, Order No. 16-158 (Apr. 22, 2016).

adopt the requested temporary rules, however, ICNU recognizes that it, as well as other parties, will retain the opportunity to evaluate the prudence of PacifiCorp's actions when it seeks recovery of any costs resulting from the renewable RFPs and to advocate its position to the Commission at that time. Nevertheless, ICNU does prefer that the Company adhere to a prudent resource procurement strategy in the first place.

To the extent ICNU disagrees with NIPPC's position in its Petition, it is in the implication that the only problem with PacifiCorp's renewable RFPs is that they appear to be predetermined to result in utility resource ownership. NIPPC still agrees that "the Company should acquire new renewable power in the near to mid-term to comply with the requirements of SB 1547."^{13/} For ICNU, on the other hand, the imprudence of PacifiCorp's renewable RFPs is primarily due to the fact that the Company does not need new renewable energy to comply with Oregon's RPS until at least 2025. Customers should not have to pay for generation they do not need.

Furthermore, the Company's justifications for acquiring RPS resources nearly a decade early are not compelling. For one, ICNU does not consider SB 1547's distinction between RECs with unlimited lives and those that are time-restricted to five years to be material enough to justify the purchase of unneeded RECs. If PacifiCorp is banking RECs for more than five years, then it has too many RECs. Yet, the Company appears to be using SB 1547's changes to REC banking as a justification to build up massive balances in its REC bank in the near term in order to use those RECs for RPS compliance many years from now.^{14/} Essentially,

^{13/} NIPPC Petition at 1-2.

^{14/} 2015 IRP Update at 54 (identifying the addition of 19 million RECs over the next ten years to meet future RPS obligations).

the Company is asking customers to overpay for their power today in order to receive speculative benefits a decade or more into the future. Not only does this create severe generational inequity, but it also imposes substantial risk on customers by asking them to take a leap of faith that the certainty of higher-than-necessary costs today will lead to cost savings in the distant future. This is a particularly risky course of action in the current environment of rapid technological change in the energy industry. PacifiCorp's strategy essentially assumes that everything will look the same in 2025 and beyond as it does today.

Nor is PacifiCorp's reliance on the gradual phase-out of PTCs beginning in 2017 sufficient to justify the construction of unneeded generation. PTCs were first created by the Energy Policy Act of 1992, and since then have expired or been on the verge of expiration ten times, including the most recent instance.^{15/} Every time they get renewed. There is no reason to believe this time will be different, especially since, even if they are allowed to expire, PacifiCorp has nearly a decade to wait to see if they are reauthorized. Furthermore, if PacifiCorp truly believes it should act in accordance with the current PTC expiration schedule, then it is odd that it has suddenly felt the urgency of the situation. For instance, PTCs were scheduled to expire at the end of 2013 under the American Taxpayer Relief Act ("ATRA"),^{16/} yet the Company's 2013 IRP, filed on April 30th of that year, did not declare any urgent need to build RPS resources. Indeed, it did not propose to build or acquire any wind until 2024, despite the fact that the Company's current "time-sensitive" strategy presumably would have been equally viable in its 2013 IRP.^{17/}

^{15/} See <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43453.pdf>.

^{16/} *Id.* at 5. The ATRA also authorized PTCs for facilities that began construction before the expiration date.

^{17/} 2013 IRP at 11.

These circumstances make it difficult to get past the supposition that PacifiCorp has timed its renewable RFP in order to evade the requirements that would normally be present in a formal IRP process, such as the requirement to update its avoided costs,^{18/} as well as to ensure ownership of more renewable resources before the Commission issues the competitive bidding rules required by SB 1547. Indeed, at a recent workshop hosted by Commission Staff to discuss SB 1547's implementation timeline, PacifiCorp's representative recommended delaying this rulemaking.^{19/}

Finally, and most concerning from Oregon's perspective, is that, while the Company does not need the renewable generation or RECs it is seeking through its RFPs, it has identified the purpose of those RFPs to be compliance with Oregon's (as well as California's and Washington's) RPS. Under the Company's existing inter-jurisdictional cost allocation methodology, as well as the updated methodology the Commission is currently considering,^{20/} the costs of resources built to comply with state-specific requirements are situs assigned to those states. This suggests that the Company will seek to impose on its Oregon customers a disproportionate share (or even all) of the costs of any unneeded resources it acquires through its renewable RFPs.

Fundamentally, it is not a good deal for the Company or anyone else to pay for something they do not need, regardless of how much it is discounted. The Company suggests that the current availability of PTCs would generate \$102 million in customer savings over 10

^{18/} OAR 860-029-0040(4).

^{19/} This workshop, held on April 21, 2016, was not part of a formal docket.

^{20/} See Docket No. UM 1050.

years for a 100 MW wind facility.^{21/} But that “savings” is only relative to a 100 MW wind plant that does not claim PTCs. It is not cheaper for PacifiCorp to build a 100 MW wind plant that has access to PTCs over the next ten years than it is for the Company to build no wind plant at all. The only reason one might pursue this course of action is if they thought someone else would reimburse them for the cost plus a return on the investment. That is why, at baseline, the prudence of a resource acquisition must depend at least in part, if not primarily, on need, not solely on the existence of manufactured incentives such as REC banking provisions, particularly when those incentives provide only speculative benefits years into the future. Incidentally, refraining from building unneeded generation, whether emission free or not, is also the most environmentally responsible action the Company can take.

For these reasons, ICNU believes PacifiCorp’s renewable RFPs are imprudent. If the Commission prefers, it can, as NIPPC proposes, take action now to prevent the Company from pursuing these RFPs. Alternatively, ICNU plans to pursue its right at the proper time to advocate for the disallowance of any costs associated with these RFPs in customer rates.

IV. CONCLUSION

ICNU agrees with NIPPC that PacifiCorp should not acquire new renewable energy under its 2016 renewable RFPs and supports any Commission action that protects customers from imprudently incurred costs. Such action could be in the form of the relief NIPPC requests; however, the Commission should recognize that the primary problem with the Company’s RFPs is not that they are skewed toward utility ownership – though, to be clear,

^{21/} 2015 IRP Update at 55.

ICNU is concerned by this also – but that they seek generation and RECs that are not needed and, if allowed in rates, will unnecessarily increase costs for customers.

Dated this 2nd day of May, 2016.

Respectfully submitted,

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