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October 15, 2009

Via Electronic and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: Investigation into determination of resource sufficiency
Docket No. UM 1396

Dear Filing Center:

Enclosed please find an original and one copy of the Initial Comments on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Allison M. Wils
Allison M. Wils

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Initial Comments of the Industrial Customers of Northwest Utilities upon the parties on the service list, shown below, by causing the same to be sent by electronic mail to all parties, as well as, deposited in the U.S. Mail, postage-prepaid, to parties which have not waived paper service.

Dated at Portland, Oregon, this 15th day of October, 2009.

/s/ Allison M. Wils
Allison M. Wils

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1396

In the Matter of)	
)	
THE PUBLIC UTILITY COMMISSION OF)	INITIAL COMMENTS OF THE
OREGON)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES ON THE
Investigation into determination of resource)	PROPOSED DECISION OUTLINE
sufficiency, pursuant to Order No. 06-538.)	
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits these initial comments regarding the proposed decision outline issued by the Administrative Law Judge in this proceeding on September 29, 2009. The decision outline would establish a new framework for the determination of resource sufficiency for the purposes of calculating avoided cost payments to Qualifying Facilities (“QFs”). ICNU appreciates the opportunity to submit these comments on the proposed decision outline, and believes that it represents a creative effort to address the problems inherent in basing the determination of resource sufficiency and deficiency periods on the utilities integrated resource plans (“IRPs”). ICNU applauds both the Oregon Public Utility Commission’s (“OPUC” or the “Commission”) attempt to craft an innovative solution to this difficult issue, and the decision to provide the parties with an opportunity to comment on its proposed decision prior to issuing a final order.

The Commission appears willing to use the utilities IRPs to determine the resource sufficiency/deficiency periods, but has proposed solutions to address some of the more significant problems associated with relying upon the IRPs. The proposed decision outline sketches a new methodology that could result in different resource sufficiency/deficiency periods depending on: 1) the type of resource the utility plans to acquire in its IRP; and 2) the type of resource that the QF intends to sell to the utility. This overall framework could potentially result in more accurate avoided costs than either the current methodology or the utility/Staff proposal to solely rely upon the IRP; however, ICNU proposes a number of revisions and clarifications, which would make the Commission's proposal more accurate and workable. Without these changes and clarifications, the proposed new methodology could have unintended consequences and put some QFs in a worse position than the current methodology.

II. COMMENTS

1. Solely Relying Upon the Utility IRP Would Result in Simplistic and Inaccurate Avoided Costs

Using each utility's IRP to determine the resource sufficiency/deficiency period, without any other changes, would continue the existing disharmony between the utility resource sufficiency period and actual utility resource acquisition practices. In challenging the utilities' proposals to use their IRPs to determine resource sufficiency, ICNU identified the following major concerns:

- Critical aspects of the utilities' IRPs that are relevant to avoided cost issues are not always acknowledged by the Commission;

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- The utilities' IRPs propose to acquire both capacity and energy resources, other than combined cycle combustion turbines ("CCCTs") during the time periods in which they have been considered resource sufficient in both their IRPs and avoided costs rates; and
- There is no guarantee that the utilities will follow their IRPs, and the utilities have significantly departed from their IRPs in the past.

The Commission's decision outline proposes to address the first of these problems, but does not appear to recommend a solution to the problem of utilities departing from the IRP action plan, when they actually acquire new resources.

ICNU recognizes that strict adherence to utility IRPs is not always warranted, but QFs should not be harmed by the utilities setting long sufficiency periods in the IRP, while later acquiring significant resources in a manner inconsistent with the IRP. There should be comparability in the treatment of new QF resources and new utility resources. QFs should not be penalized because the utilities are allowed to deviate from its IRP (and actual experience shows this occurs). For example, if a utility sees a need for a new resource in 2012, but acquires one in 2010, that would arguably push back the "deficiency date" beyond 2012. However, the effect of this scenario would be that the utility can acquire resources earlier than the deficiency date, but still use the sufficiency/deficiency period to underpay QFs. Thus, the Commission should resolve the problem for QFs of the utilities departing from their IRP. Failure to resolve this problem will result in one standard for utilities and another for QFs.

The Commission could remedy the problem of the utilities not following their IRPs in a number of ways. For example, the Commission could automatically

suspend the resource sufficiency period when the utility enters into a contract to purchase a major new resource in a manner inconsistent with its IRP. The acquisition of a Chehalis type resource arguably suggests that the utility is not actually sufficient. The temporary elimination of the sufficiency period would apply until the next acknowledged IRP sets a new sufficiency period. The Commission could also recognize the possibility that the utilities' may depart from their IRPs when determining which methodology to select for setting avoided costs during the sufficiency period. This would militate in favor of a resource sufficiency methodology that provides QFs with some compensation for the fact that the resource sufficiency period may be too long and thereby understate the value of QF power. Ultimately, ICNU believes the best solution is not to rely on the IRP for determination of the deficiency date, but rather to use the methodology proposed in the testimony of Mr. Falkenberg, which uses a three tiered test based on analysis of peak demand requirements.

2. The Commission's Decision Outline Could Resolve Some of the Problems Caused By the Utilities Acquiring Resources When They Are "Sufficient"

The Commission's decision outline appears to recognize that a significant problem with the current resource sufficiency/deficiency period is that the utilities often add significant capacity and energy resources during the period their IRPs show the utilities to be resource "sufficient." Under the current methodology and the utilities' proposal, utilities are assumed to be resource sufficient for all periods prior to when they plan to acquire a new CCCT. One problem with this approach is that the utilities' IRPs may include plans to acquire gas peakers, demand side management ("DSM"), wind

generation, thermal plant upgrades, capacity contracts, and market purchases during this “sufficiency” period. While the utilities are acquiring a variety of energy and capacity resources, the rates for QFs during this period are based upon a market based price that is largely energy based and includes only the small capacity component embedded in the current market prices.

ICNU understands that the Commission proposes to partially remedy this problem by having different deficiency periods based on the type of resource the utility intends to acquire and the type of QF resource. First, the decision outline contemplates that there still would be a resource sufficiency period prior to when the utility plans to acquire a new major renewable, peaker or CCCT resource. Avoided costs would be based on wholesale market price forecasts during the sufficiency period. For the deficiency period, the Commission would establish separate deficiency periods for: 1) renewable resources; 2) gas peaker resources; and 3) CCCT resources. For the renewable deficiency period, a renewable QF that cedes the renewable energy credits (“REC”) to the utility could select avoided costs based on the cost of a major renewable resource. For the peaking resource deficiency period, avoided costs would be based on market prices plus a capacity contribution until the expected start date of another major resource. For the CCCT resource deficiency period, all QFs may select an avoided cost stream based on the costs of a gas CCCT.

This overall approach is superior to simply using the IRP as mechanism to determine resource deficiency periods, which pay QFs market price during the

sufficiency period and the value of a gas CCCT during the deficiency period. This approach generally recognizes that utilities do not actually have only two resource options: 1) the market; or 2) a gas CCCT. It also recognizes that the utilities' IRPs propose to acquire significant amounts of new resources prior to the CCCT, many of which are not market purchases. If the Commission does not adopt Mr. Falkenberg's recommendations, ICNU recommends that the Commission adopt the proposed decision outline as a general framework, as clarified and revised by ICNU's comments, and allow the parties to implement these proposals in utility specific avoided cost proceedings or a new generic proceeding where appropriate.

3. The Commission Should Set the Definition of a Major Renewable Resource at Less than 100 MWs

The Commission proposes to separate the resource sufficiency from the resource deficiency periods based on when the utilities plan to acquire a "major resource," as defined in the Commission's competitive bidding guidelines. The competitive bidding guidelines define a "major resource" as a resource with a duration of five years or longer and greater in size than 100 MW. Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446, Appendix A at 1 (Aug. 10, 2006). This definition is workable for thermal resources, but is problematic for renewable resources, and the size of the resource that sets the renewable deficiency threshold should be lower.

Utilities have considerable discretion to size wind generation projects to avoid or meet requirements in statute or administrative rules. Wind projects are made up

of individual wind turbines that can be arbitrarily installed at different time periods or broken up into “separate” projects based on non-economic factors. This is not merely a theoretical possibility, as PacifiCorp has intentionally sized many of its renewable wind projects at 99 MW capacities to avoid the Commission’s major resource acquisition guidelines.” Re PacifiCorp, Docket No. UE 200, Order No. 08-584 at 22 (Nov. 14, 2008). The Commission should avoid future disputes about the utilities’ plans to acquire renewable resources by setting a size threshold much lower than 100 MWs. This also makes practical sense because many of the renewable QFs will be smaller than 100 MWs, and the utilities could potentially avoid building or purchasing smaller renewable resources if they purchase from smaller renewable QFs. ICNU recommends that the size threshold for major renewable resources be set at 40 MWs for new plants, and at 15 MWs for projects which are built at or adjacent to existing renewable plants.

4. The Commission Should Not Lower the Avoided Cost Rates During the Resource Sufficiency Period

The proposed decision outline would retain the resource sufficiency period and avoided costs would be “based on an appropriate wholesale market price forecast.” ICNU is not sure if the Commission is proposing to modify the resource sufficiency avoided cost prices, which are currently based a market price forecast of energy and capacity. The Commission should not base resource sufficiency payments on forecasts of energy alone, but should instead consider setting the resource sufficiency price based on a composite value of those resources the utilities plan to acquire in the IRP for the resource sufficiency period.

The Commission's current methodology for determining avoided costs during the sufficiency period includes an energy payment based on the utilities' variable costs and a capacity payment based on the market. Re Staff's Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 27-28 (May 13, 2005). The Commission included a small market based capacity payment in the sufficiency market price because of "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." Id. at 28.

If the Commission relies upon the utilities' IRPs to determine the resource sufficiency/deficiency periods, then the Commission should not eliminate the capacity payment during the resource sufficiency period. The Commission may be relying upon ICNU's proposal to set a lower resource sufficiency price based only upon the market value of energy. ICNU/100, Falkenberg/7. This recommendation, however, was based on the assumption that the Commission would adopt ICNU's proposal, which would determine resource sufficiency based on whether the utilities are demand and reserve sufficient. Id. In other words, ICNU's proposal recognized that it would be appropriate not to provide QFs a capacity payment if the utilities did not need any capacity resources and was in a surplus position with respect to both capacity and reserve requirements. This proposal was intended to only apply in situations of excess capacity. Under the proposed decision outline, however, the utilities would acquire some capacity resources

during the sufficiency period and it would make sense to provide QFs with some sort of a capacity payment.

It may be more appropriate to make other changes to the resource sufficiency avoided costs to more accurately ensure that they equal the cost of energy and capacity that the utilities would generate itself or purchase from another source but for the purchase from QFs. During the sufficiency period prior to acquisition of a new CCCT, the utilities typically plan to acquire a variety of resources, including market purchases, capacity contracts, wind generation, DSM, plant upgrades, cogeneration, and other resources. The resource sufficiency prices for all QFs should be based on a weighted average of the resources the utilities are actually planning to build or acquire during this time period. This should include the value of any renewable energy the utilities are planning to acquire if the renewable energy is justified based on least cost grounds and is not acquired only because of a statutory requirement (e.g., a renewable portfolio standard (“RPS”), solar mandate tariff or renewable feed-in tariff). This would be more accurate than simply a market price forecast (with or without a capacity payment).

5. Avoided Costs for Renewable QFs Should Be Based on the Cost of Renewable Resources

ICNU strongly supports allowing renewable QFs that cede their RECs to the utility to be able to select an avoided cost based on the cost of renewable resources identified in the IRP during the renewable deficiency period. This would be consistent with the utilities’ IRPs and actual practices of building and purchasing significant

renewable resources during the resource sufficiency period. ICNU, however, recommends the Commission make certain clarifications and improvements to better implement this change in the avoided cost methodology for renewable QFs.

The proposed decision outline specifies that the renewable avoided cost stream is only available to a renewable QF eligible under the RPS. Eligible renewable QFs should not be limited to only the Oregon RPS. If a utility is acquiring renewable resources that would meet an RPS requirement in another state in which it provides service or a Federal RPS, then the renewable QF should be able sell power based on the costs of the renewable resource. For example, the Oregon RPS includes statutory limitations which exclude certain resources that are renewable from qualifying under the law (e.g., renewables prior to January 1, 1995 may not qualify under Oregon RPS). These same renewable resources, however, may qualify to meet the utility's RPS requirements in another state or under a Federal RPS (if it is passed). The Commission should clarify that a renewable QF should be eligible to receive avoided costs based on the costs of a renewable resource if the QF qualifies under any RPS that applies to an Oregon utility.

The Commission should ensure that utilities accommodate the unique operational characteristics of certain renewable biomass generators. Some biomass facilities can produce electricity from multiple fuel types, only some of which qualify as renewable. See ORS § 469A.025. For multi-fuel source renewable biomass QFs, the Commission should clarify that their avoided costs can be based on a renewable proxy

resource for the portion of their output that qualifies as renewable. The type of fuel a biomass facility uses is often highly dependent upon operational and market conditions, many of which cannot be known prior to signing a QF power sale contract. Since it may be impossible to exactly determine the proportion of their output that will be renewable prior to signing a contract, the Commission should allow the utilities and the QF to enter into contracts which include provisions that would base the actual avoided cost payments based on the actual amount of qualifying renewable energy (and RECs) sold to the utility.

The Commission should also clarify a potential ambiguity regarding which avoided costs a renewable QF qualifies for during the period in which the utility intends to acquire thermal resources. During the time a utility is deficient and needs to acquire either a peaker unit or CCCT, the proposed decision outline is unclear regarding whether the renewable QF could select the avoided cost option based on whichever option is more economic for the QF, or if the renewable QF would be limited to the thermal resource avoided costs during the peaker or CCCT deficiency periods.

6. Avoided Costs for QFs During the Peaker Deficiency Period Should Be Based on the Cost of a Peaker Resource

The proposed decision outline contemplates a separate deficiency period based on the utilities' need for gas peakers that would allow the QF to be paid based on market prices, plus a premium for capacity contribution. The capacity premium "would depend on whether the QF provides power when the utility uses the peaker." This "market-plus rate" would be in effect until the start date of another major resource.

ICNU has two major concerns with this proposal: 1) it is unclear how this avoided cost

pricing would differ from the current sufficiency period prices; and 2) it is inconsistent with the Commission's apparent goal of more accurately linking the prices paid to QFs with the resources the utilities plan to acquire in their IRPs.

As previously described, the Commission's current methodology prices avoided costs during the resource sufficiency period based on the market value of energy and capacity. This is not a "market-plus rate," but a market energy rate plus a valuation of capacity based on the market. Re Staff's Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 27-28 (May 13, 2005). The draft decision outline does not make it clear whether the avoided cost rate during the peaker deficiency period would be based on the current method for sufficiency prices or a different rate. The current methodology for determining resource sufficiency prices does not fully compensate QFs for the value associated with avoiding the costs of new peakers.

ICNU recommends that the Commission should not set the avoided cost rates during the peaker deficiency period upon market prices plus a capacity contribution. Instead, the avoided costs should be based on the resource they could actually displace: the costs of the peaker resource. It does not make sense to set avoided costs for the renewable and CCCT deficiency period based on the resources that would be avoided, but then to set costs for the peaker deficiency period based on resources that would not be avoided. ICNU proposes to value peakers for avoided cost purposes by using the non-

firm hourly energy cost capped at the peaker energy cost and add that to the peaker's fixed costs.

7. The Commission Should Limit the Ability of the Utilities' to Game the System By Manipulating the Timing of Avoided Cost Filings

The draft decision outline includes a number of proposals regarding the timing of avoided cost filings and their updates. Utilities will be required to file their avoided costs every two years and thirty days after an IRP order. Parties would be permitted to seek an update of avoided costs based on the results of a request for proposal ("RFP"). During the years in which the utility does not make an avoided cost filing, market prices and generation costs may be updated, but the start date for the resource deficiency period will not be updated unless the utilities receives acknowledgment of an updated action plan.

The overall approach appears reasonable, although ICNU has some concerns with certain specific aspects of the proposed timing of filings. More importantly, ICNU is concerned that these timing issues may not have been sufficiently developed by the parties in this case. QFs did not actively participate in this proceeding, and it may be better to resolve these issues after the Commission obtains broader input. In addition, these timing issues implicate a number of other related issues, including but not limited to, the updating of avoided costs before acknowledgment of a utility IRP, and the contrast between lead time associated with entering into QF contracts and the utility's ability to change the avoided cost rates with 30-days notice. It may be more appropriate

to resolve all of these issues in a generic proceeding regarding process and timing of avoided cost rates and QF contracts.

ICNU supports the ability to update avoided costs with information available from RFPs and market conditions if certain limitations are imposed upon the utilities ability to unilaterally update their avoided costs. If the avoided costs are updated, utilities should only be allowed to update their avoided costs at well established specific times. Non-utility parties (including Staff), in contrast, should have the ability to request that avoided costs be updated at different times in response to information obtained in an RFP or significant market changes.

There are a number of legitimate reasons why the utilities should not have the ability to unilaterally update their avoided costs. QF development can be a difficult process and unexpected harmful price changes can hurt the ability of QFs to obtain financing. QF negotiations with the utilities can be difficult and drawn out affairs in which the utilities engage in obfuscation and stonewalling. Utilities should not be allowed to delay the negotiation process and then surprise QFs with avoided cost updates. Utilities are also in a superior position in regards to information and the impact of changes in RFP and market assumptions than QFs and their representatives. Similar to deferred accounting requests, the utilities cannot be expected to update their avoided costs in an even handed manner and they will likely only propose updates when it harms QFs. If a QF is already in the process of negotiating a contract when the update occurs, then the QF should have the option of selecting the avoided cost that was in effect when

the negotiation began.

III. CONCLUSION

ICNU continues to support the three-tier resource sufficiency methodology proposed by Mr. Falkenberg's testimony; however, if the Commission intends to rely upon the utilities' IRPs to set the resource sufficiency/deficiency period, then the proposed decision outline could be a workable starting point. The Commission should recognize that any order along the lines of the proposed decision outline is likely to require additional implementation in utility specific and/or generic proceedings. ICNU recommends that the Commission make a number of changes and clarifications to the draft decision outline, including at a minimum:

- Unfairly extending the date of resource sufficiency by acquiring resources during the sufficiency period;
- Setting the size threshold for a major renewable resource at 40 MWs, rather than 100 MWs;
- Not lowering the avoided costs paid to QFs during the sufficiency period;
- Modifying the resource sufficiency avoided cost rates to be based on the value of all the energy and capacity resources the utilities plan to acquire during the relevant sufficiency period;
- Ensuring that all eligible renewable QF power qualifies for the renewable avoided cost rates (including renewable energy from biomass facilities and RECs that can be used to meet a utility's RPS requirements in another state);
- Paying QFs during the peaker deficiency period based on the value of a peaker resource; and
- Ensuring that the utilities cannot abuse the process associated with

updating avoided costs.

Dated this 15th day of October, 2009.

Respectfully submitted,

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/s/ Irion A. Sanger

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