

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 S.W. Taylor
Portland, OR 97204

May 13, 2011

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: In the Matter of the PUBLIC UTILITY COMMISSION OF OREGON
Investigation into determination of resource sufficiency, pursuant to Order
No. 06-538
Docket No. UM 1396

Dear Filing Center:

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

Thank you for your assistance, and please do not hesitate to contact our office if you have any additional questions.

Sincerely yours,

/s/ Sarah A. Kohler
Sarah A. Kohler

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Opening Comments on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, where paper service has not been waived.

Dated at Portland, Oregon, this 13th day of May, 2011.

/s/ Sarah A. Kohler
Sarah A. Kohler

(W) PACIFIC POWER & LIGHT
JORDAN A WHITE
1407 W. NORTH TEMPLE, STE 320
SALT LAKE CITY UT 84116
jordan.white@pacificorp.com

(W) MCDOWELL & RACKNER PC
LISA RACKNER
419 SW 11TH AVE - SUITE 400
PORTLAND OR 97204
lisa@mcd-law.com

PACIFICORP
OREGON DOCKETS
825 NE MULTNOMAH ST STE 2000
PORTLAND OR 97232
oregondockets@pacificorp.com

(W) PUBLIC UTILITY COMMISSION OF OREGON
ED DURRENBERGER
PO BOX 2148
SALEM OR 97301
ed.durrenberger@state.or.us

(W) RICHARDSON & O'LEARY
GREGORY M ADAMS
PETER J RICHARDSON
PO BOX 7218
BOISE ID 83702
greg@richardsonandoleary.com
peter@richardsonandoleary.com

(W) OREGON DEPARTMENT OF ENERGY
MATT KRUMENAUER
VIJAY A SATYAL
625 MARION ST NE
SALEM OR 97301
matt.krumenauer.state.or.us
vijay.a.satyal@state.or.us

(W) ENERGY TRUST OF OREGON
ELAINE PRAUSE
JOHN M VOLKMAN
851 SW 6TH AVE SUITE 1200
PORTLAND OR 97204
elaine.prause@energytrust.org
john.volkman@energytrust.org

(W) PUC STAFF - DEPARTMENT OF JUSTICE
STEPHANIE S ANDRUS
BUSINESS ACTIVITIES SECTION
1162 COURT ST NE
SALEM OR 97301-4096
stephanie.andrus@state.or.us

(W) RENEWABLE ENERGY COALITION
JOHN LOWE
12050 SW TREMONT ST
PORTLAND OR 97225-5430
jravenesanmarcos@yahoo.com

STOLL BERNE
DAVID A LOKTING
209 SW OAK STREET, SUITE 500
PORTLAND OR 97204
dlokting@stollberne.com

(W) PORTLAND GENERAL ELECTRIC
RANDY DAHLGREN – 1WTC0702
J RICHARD GEORGE – 1WTC1301
121 SW SALMON ST
PORTLAND OR 97204

(W) DEPARTMENT OF JUSTICE
JANET L PREWITT, AAG
NATURAL RESOURCES SECTION
1162 COURT ST NE
SALEM OR 97301-4096

pge.opuc.filings@pgn.com
richard.george@pgn.com

**(W) NORTHWEST ENERGY SYSTEMS COMPANY
LLC**

DAREN ANDERSON
1800 NE 8TH ST., STE 320
BELLEVUE WA 98004-1600
da@thescogroup.com

**(W) COMMUNITY RENEWABLE ENERGY
ASSOCIATION**

PAUL R WOODIN
1113 KELLY AVE
THE DALLES OR 97058
pwoodin@communityrenewables.org

(W) ANNALA, CAREY, BAKER, ET AL., PC

WILL K CAREY
PO BOX 325
HOOD RIVER OR 97031
wcarey@hoodriverattorneys.com

**(W) REGULATORY & COGENERATION SERVICES,
INC**

DONALD W. SCHOENBECK
900 WASHINGTON ST STE 780
VANCOUVER WA 98660-3455
dws@r-c-s-inc.com

janet.prewitt@state.or.us

(W) IDAHO POWER COMPANY

CHRISTA BEARRY
DONOVAN E WALKER
PO BOX 70
BOISE ID 83707-0070
cbearry@idahopower.com
dwalker@idahopower.com

(W) CITIZENS UTILITY BOARD OF OREGON

ROBERT JENKS
G. CATRIONA MCCrackEN
610 SW BROADWAY, STE 400
PORTLAND OR 97205
bob@oregoncub.org
catriona@oregoncub.org

(W) THOMAS H NELSON

PO BOX 1211
WELCHES OR 97067-1211
nelson@thnelson.com

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

**UM 1396
Phase II**

In the Matter of)	
)	
THE PUBLIC UTILITY COMMISSION OF)	OPENING COMMENTS OF THE
OREGON)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES
Investigation into Determination of Resource)	
Sufficiency, pursuant to Order No. 06-538.)	
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits these Opening Comments regarding the avoided costs applicable to renewable qualifying facilities (“QF”). ICNU and most of the parties in this proceeding have submitted three rounds of comments on these issues, which were filed in a prior phase of this proceeding. ICNU understands that the Oregon Public Utility Commission (the “Commission” or “OPUC”) is familiar with these previous comments, and will not repeat all the previously raised arguments. Instead, these comments focus on the specific questions identified in the Commission’s list of remaining substantive and procedural issues. Re Investigation into Determination of Resource Sufficiency, Docket No. UM 1396, Order No. 10-448 at App. A (Dec. 22, 2010).

ICNU recommends that the Commission allow renewable QFs the option to select either the traditional avoided cost rate or a renewable avoided cost rate,

assuming Oregon utilities need renewable resources to meet renewable portfolio standard (“RPS”) requirements. Contrary to the arguments of PacifiCorp, Idaho Power Company (“Idaho Power”) and Portland General Electric Company (“PGE”) (jointly, the “Utilities”), this approach is entirely consistent with the requirement of the Public Utility Regulatory Policy Act (“PURPA”) that the avoided costs be based on the cost of electricity that the Utilities would purchase but for the purchase of electricity from the QF. Renewable QFs should have the option to select between a renewable and non-renewable avoided cost rate and should not be forced to sell their renewable energy credits (“RECs”) and take only the renewable avoided cost rate.

ICNU also supports the Commission: 1) taking into account all of an individual utility’s RPS requirements, including those from other states or the federal government; 2) basing the renewable avoided cost option on more than just wind resources; 3) reflecting in the renewable avoided cost rate an avoided purchase of an unbundled REC once the Utilities are purchasing unbundled RECs; and 4) considering a planned resource avoidable once the resource has been substantially completed and is nearly ready to be placed in service. Finally, except for the actual setting of avoided cost rates, all of the remaining issues in this phase of the proceeding are policy questions and do not warrant an evidentiary hearing.

II. COMMENTS

1. A Renewable QF Should Be Able to Choose Between a Renewable and a Non-Renewable Avoided Cost Stream

Allowing renewable QFs to select a renewable avoided cost rate option is consistent with PURPA, will allow more accurate and reasonable avoided cost calculations, and may allow the Utilities to meet their RPS requirements in a more cost-effective manner for ratepayers. The Commission's PURPA rules already require that different types of QFs be paid different avoided cost amounts depending on their size and operational characteristics, and setting a renewable avoided cost rate is not a fundamental departure from this precedent. As long as the Utilities are planning to acquire either renewable or thermal resources, QFs should be able select from both renewable and non-renewable rate options.

PURPA was passed to require utilities to purchase power from QFs at the utilities' avoided cost rate. 16 U.S.C. § 824a-3(b)-(d). Avoided costs should be based on a utility's incremental costs that, but for the purchase from the QFs, the utility would generate or purchase from another source. *Id.* at § 824a-3(d); ORS § 758.515(2)(b). The Commission has been given the authority to implement PURPA and to calculate the appropriate avoided costs for the Utilities. 16 U.S.C. § 824a-3(f). The Commission's previously articulated goal in implementing PURPA is "to encourage the economically efficient development of ... [QFs], while protecting ratepayers by ensuring that utilities pay rates equal to that which they would have incurred in lieu of purchasing QF power."

Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 1 (May 13, 2005).

Establishing renewable and non-renewable avoided cost rates is consistent with accurately calculating what the Utilities' incremental power costs would be if they did not purchase power from the QFs. Utilities are in the process of acquiring both thermal and renewable resources to meet their future load requirements, but renewable resources (when they include the associated RECs) are fundamentally different because they can be used to meet RPS requirements. Thus, the Utilities are planning to acquire two fundamentally different kinds of resources, and QFs should be compensated based on which type of resource they cause the Utility to avoid purchasing or building.

Renewable QFs that generate RECs can sell their electricity to the Utilities while retaining the RECs. Re Commission Rulemaking, Docket No. AR 495, Order No. 05-1229 at 7-9 (Nov. 28, 2005). This is because QFs are only selling power to the Utilities, and the compensation paid to the QFs does not include any potential social or environmental values associated with the electricity. Id.; American Ref-Fuel Co., 105 FERC ¶ 61,004 at ¶¶ 21-23 (2003), reh'g denied 107 FERC ¶ 61,016 (2004). Under the current rules, the QFs are selling power (without RECs) that does not qualify for RPS compliance purchases and causes the Utilities to avoid the need to build or purchase non-renewable power. Thus, it makes sense that QFs should be paid avoided cost rates based on only non-renewable resources if the QFs retain their RECs. Similarly, if a QF is willing to sell both electricity and the RECs, then the QF would be causing the Utilities to

PAGE 4 – OPENING COMMENTS OF ICNU

avoid future purchases or construction of renewable resources, and the QF should be eligible to be paid based on the avoided costs of the renewable resource.

Requiring separate renewable and non-renewable avoided cost rates is consistent with the Commission's previous decisions establishing different avoided cost rates for different types of QFs. It is also reasonable for the Commission to conclude that the specific operational characteristics or type of power sold by a QF warrants a different avoided cost rate. For example, the Commission has established different avoided cost rates for small QFs (under 10 MWs) and large QFs. Docket No. UM 1129, Order No. 07-360 App. A at 1, 3-5 (Aug. 20, 2007). The rates for large QFs start with the standard avoided cost rates, but must be altered based on the QF's actual operational characteristics. Id. Thus, a large QF can provide power that is more or less valuable than the standard avoided cost rate, which assumes that the large QF is causing the utility to avoid the purchase or building of a more or less valuable resource than the standard proxy resource.

The Utilities have argued that allowing a QF to select either a renewable or non-renewable avoided cost rate would violate PURPA because it would value the electricity "not on the basis of the energy the utility would be avoiding, but on the basis of whichever avoided cost stream is more advantageous to the QF." Utilities' Final Comments at 4-5. The Utilities' arguments are contradictory because they also argue that if a renewable QF "cedes" its RECs to the Utility, then those QFs "that cede RECs avoid different costs than QFs that do not cede RECs" Id. at 5. The Utilities' real

argument is not that they are opposed to valuing the power sold by a QF differently if the electricity includes RECs, but that they do not want renewable QFs to be able to elect between renewable and non-renewable resource options.

Other than the Utilities' traditional hostility toward QFs, there is no legitimate basis not to allow QFs to choose between two different options for selling their electricity. If the QF is selling power that appropriately reflects the Utilities' avoided costs and does not harm ratepayers, then there is no reason why the QF should not be allowed to choose the more advantageous rate. One of the goals of PURPA is to encourage the "economically efficient development of qualifying facilities in Oregon." Docket No. UM 1129, Order No. 05-584 at 9, 11 (citing the 1988 OPUC report to the Oregon Legislature). Ratepayers should be protected if the renewable and non-renewable avoided cost rates accurately reflect the Utilities' thermal and renewable resource costs. Thus, allowing QFs to select among two resource options provides an appropriate incentive for the economic development of QFs that protects ratepayers and ensures that the Utilities do not pay rates higher than they would if they acquired electricity from another source.

The Utilities also argue that that the Commission cannot require them to purchase "RECs from QFs or mandate a level of compensation for RECs." Utilities Final Comments at 5. The Utilities fail to cite any precedent or cases in support of their arguments. The Utilities' position is noticeably at odds with rulings by the Federal Energy Regulatory Commission ("FERC"), which allows state commissions to

implement different avoided cost rates if they are based on actual differences in the costs that a utility avoids when purchasing power from the QFs, including environmental costs. California Public Utilities Commission, 133 FERC ¶ 61,059 at ¶¶ 27-31 (2010); American Ref-Fuel Co., 105 FERC ¶ 61,004 at ¶¶ 21-23 (2003), reh'g denied 107 FERC ¶ 61,016 (2004). If the QF is selling electricity that includes RECs, then those sales offset the need to acquire renewable resources, and the Commission has the authority to require that the QF be compensated based on the costs of a renewable resource, including specifying the amount of compensation for the RECs.

2. The Renewable Resource Deficiency Period Should Be Based on When the Renewable Resource Is Actually Needed

The Commission has solicited comments on how to determine the start of the renewable resource deficiency period. Docket No. UM 1396, Order No. 10-448 at App. A. Specifically, the Commission has asked whether the renewable resource deficiency period should be based on the Integrated Resource Plan (“IRP”) action plan identifying when a renewable resource would be avoided, or the start of a utility’s purchase of unbundled RECs. Id. The IRP action plan may be a reasonable starting point for analysis of when the renewable resource deficiency period begins, but that date should be modified based on actual utility plans or actions that demonstrate the utility needs renewable resources including, but not limited to, the purchase of unbundled RECs. In addition, the Commission also should consider information provided in the Utilities’ RPS implementation plans if they indicate a need for renewables different from the IRP. Therefore, ICNU proposes the renewable resource deficiency period should

start when the Utilities actually need renewable resources. The Commission should set this based on the earlier of the date provided in a utility plan (IRP or RPS implementation) for acquiring renewable resources or the date of any actual purchase of renewable resources, including unbundled RECs.

3. Out-of-State RPS Requirements Should Be Considered When Determining Whether a Renewable Resource Can Be Avoided

The Commission has requested that parties provide comments on whether out-of-state RPS requirements should be taken into account when determining whether a renewable resource can be avoided. Docket No. UM 1396, Order No. 10-448 at Appendix A. This issue was raised and commented on in earlier phases of the proceeding. ICNU previously suggested that renewable QFs should be allowed to sell renewable power and RECs to an Oregon utility to offset that utility's actual RPS needs, including those from other states or the federal government. ICNU Final Comments at 4-6. The Utilities did not raise any substantive concerns with the proposal, and Staff supported ICNU's recommendation. Utilities Final Comments at 6; Staff Final Comments at 2. ICNU continues to support its previous comments and recommends that the Commission not limit the proposal to only state RPS obligations, but to include any federal RPS requirements, if passed.

4. Renewable Avoided Costs Should Not Be Based on a Proxy Wind Resource Alone

The Commission has proposed that the renewable avoided cost rate be based on either the estimated costs of the renewable resources identified in an IRP action

plan, or a “proxy” resource approach similar to the current approach used for standard avoided costs. Docket No. UM 1396, Order No. 10-448 at App. A. Staff recommends that the renewable avoided cost rate be based on a proxy wind resource using the estimated fixed and variable costs and capacity factor in the Utilities’ IRPs. Staff Final Comments at 2.

In principle, ICNU does not oppose either an IRP or proxy resource-based approach, but the method of implementation is important. The IRP process is not an evidentiary proceeding that provides the parties an opportunity to contest the Utilities’ factual claims or to submit testimony. Avoided costs, in contrast, are actual rates which must be “just and reasonable.” ORS §§ 758.515, 758.525. If the Commission adopts an IRP based approach, ICNU recommends that the Commission ensure that the actual rates are subject to review in an evidentiary proceeding.

If the Commission elects to use a proxy resource approach similar to its current approach to standard avoided costs, the proxy resource should not be based solely upon the costs of a wind resource. The Utilities are currently acquiring or planning to acquire a variety of renewable resources, including, but not limited to, solar, geothermal, wind, and hydro improvements. E.g. PacifiCorp 2011 IRP at 8 (March 31, 2011).

Although ICNU understands Staff’s concerns regarding the administrative simplicity of a single proxy resource, ICNU recommends that the avoided renewable costs should be based on the costs of those renewable resources that are actually avoided, and not a single proxy resource.

PAGE 9 – OPENING COMMENTS OF ICNU

A proxy wind resource is also likely to have significantly different operational characteristics than many of the renewable QFs selling power to the utilities. For example, hydro and biomass QFs have different capacity factors from wind and may operate more like a reliable base load resource than an intermittent wind resource. The different operational characteristics of these renewables should be taken into account because they may be more valuable than wind. The Commission already takes into account certain operational characteristics for QFs over 10 MWs, including a facility's reliability and dispatchability, and whether a facility avoids fossil fuel risk, certain transmission and distribution costs, and line losses. Docket No. UM 1129, Order No, 07-360 App. A at 1, 3-4. In addition, there are specific adjustments related to wind integration costs for wind QFs. *Id.* App. A at 4. This is consistent with FERC's regulations, which allow avoided cost rates to "differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies" and to account for operational characteristics like the capacity and energy of the QF. 18 C.F.R. §§ 292.304(c)(3)(ii), 292.304(e).

If the Commission elects to use a proxy resource-based approach, ICNU recommends that the Commission use different proxy resources for each type of QF, including wind, biomass, hydro and solar. In the alternative, the Commission could use a single proxy wind resource, but should provide detailed guidance regarding how the avoided costs for the proxy resource should be adjusted to account for the different operational characteristics of non-wind QFs.

5. A Planned Resource Is Avoidable When the Construction Is Substantially Complete

The Commission has requested comments regarding when a planned resource should be considered avoidable, potentially focusing on whether an irreversible commitment has been made to purchase or build the project. Docket No. UM 1396, Order No. 10-448 at App. A. For practical purposes, the date a resource is considered “avoidable” demarks the resource deficiency period (when the utility needs resources) from the resource sufficiency period (when the utility no longer needs resources). This a significant issue for both ratepayers and QFs because the Commission’s method for calculating avoided cost rates results in higher avoided costs during resource deficiency periods (the costs are based on an avoided thermal plant) than during resource sufficiency periods (the costs are based on market purchases). ICNU recommends that a planned resource be considered avoidable until it is substantially complete because of the uncertainty associated with utility resource planning and because of the Commission’s earlier conclusion to use an IRP approach to set the resource sufficiency and deficiency periods.

The Commission should not set a date for determining when a planned resource is avoidable based on whether an “irreversible commitment” has been made to the project. The Northwest and the nation have had numerous examples of generation projects that were planned and financed, saw equipment purchased and even construction commenced, but which were never actually completed, were completed in different forms than originally planned, or experienced significant unexpected delays. Uncertainties

associated with resource planning and construction are exacerbated by the potentially changing regulatory framework associated with climate change and renewable resources. Therefore, absent a clear and easily understood manner to determine whether a project is actually going to be completed, ICNU recommends that the resource be considered avoidable until it is substantially completed.

If the Commission elects to use an “irreversible commitment” as the demarcation for determining when a resource is considered avoidable, then the Commission should carefully define the term to recognize that a utility decision to build or purchase a new resource does not always mean that the resource will actually be placed in service. For example, the Commission could treat purchased resources differently from self-build resources and recognize that there are numerous factors that could result in the delay, alteration, or termination of the construction of a generation resource.

ICNU also recommends that the Commission not allow the Utilities to use an unplanned resource procurement to suddenly change the demarcation between resource sufficiency and deficiency periods. Some Utilities have required QFs to engage in protracted and contentious negotiations with QFs, and have not always been forthcoming with all relevant information, including the date or details regarding new avoided cost rate filings. Utilities should not be allowed to surprise QFs with sudden changes in avoided cost filings, including the date upon which they are considered resource sufficient or deficient.

III. CONCLUSION

ICNU recommends that the Commission adopt the following policies regarding the avoided cost issues in this case:

- Allow renewable QFs to select a renewable avoided cost rate if they sell their RECs to the Utilities or a non-renewable avoided cost rate if they keep their RECs, but the Commission should not require renewable QFs to sell at the renewable avoided cost rate if they elect to retain their RECs;
- Set the renewable deficiency period for the earlier of the IRP action plan date for acquiring renewable resources, or when the Utilities are actually acquiring renewable resources, including RECs;
- Account for out-of-state and federal RPS requirements when determining when a renewable resource can be avoided by purchasing from a QF;
- Set the renewable avoided cost rates based on the renewable resources the Utilities are actually planning to build, not a single resource; and
- Set the date for a planned resource acquisition when the resource is substantially completed.

Dated this 13th day of May, 2011.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion A. Sanger

Irion A. Sanger

Davison Van Cleve, P.C.

333 S.W. Taylor, Suite 400

Portland, OR 97204

Phone: (503) 241-7242

Fax: (503) 241-8160

mail@dvclaw.com

Of Attorneys for Industrial Customers of Northwest
Utilities

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

**UM 1396
Phase II**

In the Matter of)	
)	
THE PUBLIC UTILITY COMMISSION OF)	OPENING COMMENTS OF THE
OREGON)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES
Investigation into Determination of Resource)	
Sufficiency, pursuant to Order No. 06-538.)	
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits these Opening Comments regarding the avoided costs applicable to renewable qualifying facilities (“QF”). ICNU and most of the parties in this proceeding have submitted three rounds of comments on these issues, which were filed in a prior phase of this proceeding. ICNU understands that the Oregon Public Utility Commission (the “Commission” or “OPUC”) is familiar with these previous comments, and will not repeat all the previously raised arguments. Instead, these comments focus on the specific questions identified in the Commission’s list of remaining substantive and procedural issues. Re Investigation into Determination of Resource Sufficiency, Docket No. UM 1396, Order No. 10-448 at App. A (Dec. 22, 2010).

ICNU recommends that the Commission allow renewable QFs the option to select either the traditional avoided cost rate or a renewable avoided cost rate,

assuming Oregon utilities need renewable resources to meet renewable portfolio standard (“RPS”) requirements. Contrary to the arguments of PacifiCorp, Idaho Power Company (“Idaho Power”) and Portland General Electric Company (“PGE”) (jointly, the “Utilities”), this approach is entirely consistent with the requirement of the Public Utility Regulatory Policy Act (“PURPA”) that the avoided costs be based on the cost of electricity that the Utilities would purchase but for the purchase of electricity from the QF. Renewable QFs should have the option to select between a renewable and non-renewable avoided cost rate and should not be forced to sell their renewable energy credits (“RECs”) and take only the renewable avoided cost rate.

ICNU also supports the Commission: 1) taking into account all of an individual utility’s RPS requirements, including those from other states or the federal government; 2) basing the renewable avoided cost option on more than just wind resources; 3) reflecting in the renewable avoided cost rate an avoided purchase of an unbundled REC once the Utilities are purchasing unbundled RECs; and 4) considering a planned resource avoidable once the resource has been substantially completed and is nearly ready to be placed in service. Finally, except for the actual setting of avoided cost rates, all of the remaining issues in this phase of the proceeding are policy questions and do not warrant an evidentiary hearing.

II. COMMENTS

1. A Renewable QF Should Be Able to Choose Between a Renewable and a Non-Renewable Avoided Cost Stream

Allowing renewable QFs to select a renewable avoided cost rate option is consistent with PURPA, will allow more accurate and reasonable avoided cost calculations, and may allow the Utilities to meet their RPS requirements in a more cost-effective manner for ratepayers. The Commission's PURPA rules already require that different types of QFs be paid different avoided cost amounts depending on their size and operational characteristics, and setting a renewable avoided cost rate is not a fundamental departure from this precedent. As long as the Utilities are planning to acquire either renewable or thermal resources, QFs should be able select from both renewable and non-renewable rate options.

PURPA was passed to require utilities to purchase power from QFs at the utilities' avoided cost rate. 16 U.S.C. § 824a-3(b)-(d). Avoided costs should be based on a utility's incremental costs that, but for the purchase from the QFs, the utility would generate or purchase from another source. *Id.* at § 824a-3(d); ORS § 758.515(2)(b). The Commission has been given the authority to implement PURPA and to calculate the appropriate avoided costs for the Utilities. 16 U.S.C. § 824a-3(f). The Commission's previously articulated goal in implementing PURPA is "to encourage the economically efficient development of ... [QFs], while protecting ratepayers by ensuring that utilities pay rates equal to that which they would have incurred in lieu of purchasing QF power."

Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 1 (May 13, 2005).

Establishing renewable and non-renewable avoided cost rates is consistent with accurately calculating what the Utilities' incremental power costs would be if they did not purchase power from the QFs. Utilities are in the process of acquiring both thermal and renewable resources to meet their future load requirements, but renewable resources (when they include the associated RECs) are fundamentally different because they can be used to meet RPS requirements. Thus, the Utilities are planning to acquire two fundamentally different kinds of resources, and QFs should be compensated based on which type of resource they cause the Utility to avoid purchasing or building.

Renewable QFs that generate RECs can sell their electricity to the Utilities while retaining the RECs. Re Commission Rulemaking, Docket No. AR 495, Order No. 05-1229 at 7-9 (Nov. 28, 2005). This is because QFs are only selling power to the Utilities, and the compensation paid to the QFs does not include any potential social or environmental values associated with the electricity. Id.; American Ref-Fuel Co., 105 FERC ¶ 61,004 at ¶¶ 21-23 (2003), reh'g denied 107 FERC ¶ 61,016 (2004). Under the current rules, the QFs are selling power (without RECs) that does not qualify for RPS compliance purchases and causes the Utilities to avoid the need to build or purchase non-renewable power. Thus, it makes sense that QFs should be paid avoided cost rates based on only non-renewable resources if the QFs retain their RECs. Similarly, if a QF is willing to sell both electricity and the RECs, then the QF would be causing the Utilities to

PAGE 4 – OPENING COMMENTS OF ICNU

avoid future purchases or construction of renewable resources, and the QF should be eligible to be paid based on the avoided costs of the renewable resource.

Requiring separate renewable and non-renewable avoided cost rates is consistent with the Commission's previous decisions establishing different avoided cost rates for different types of QFs. It is also reasonable for the Commission to conclude that the specific operational characteristics or type of power sold by a QF warrants a different avoided cost rate. For example, the Commission has established different avoided cost rates for small QFs (under 10 MWs) and large QFs. Docket No. UM 1129, Order No. 07-360 App. A at 1, 3-5 (Aug. 20, 2007). The rates for large QFs start with the standard avoided cost rates, but must be altered based on the QF's actual operational characteristics. Id. Thus, a large QF can provide power that is more or less valuable than the standard avoided cost rate, which assumes that the large QF is causing the utility to avoid the purchase or building of a more or less valuable resource than the standard proxy resource.

The Utilities have argued that allowing a QF to select either a renewable or non-renewable avoided cost rate would violate PURPA because it would value the electricity "not on the basis of the energy the utility would be avoiding, but on the basis of whichever avoided cost stream is more advantageous to the QF." Utilities' Final Comments at 4-5. The Utilities' arguments are contradictory because they also argue that if a renewable QF "cedes" its RECs to the Utility, then those QFs "that cede RECs avoid different costs than QFs that do not cede RECs" Id. at 5. The Utilities' real

argument is not that they are opposed to valuing the power sold by a QF differently if the electricity includes RECs, but that they do not want renewable QFs to be able to elect between renewable and non-renewable resource options.

Other than the Utilities' traditional hostility toward QFs, there is no legitimate basis not to allow QFs to choose between two different options for selling their electricity. If the QF is selling power that appropriately reflects the Utilities' avoided costs and does not harm ratepayers, then there is no reason why the QF should not be allowed to choose the more advantageous rate. One of the goals of PURPA is to encourage the "economically efficient development of qualifying facilities in Oregon." Docket No. UM 1129, Order No. 05-584 at 9, 11 (citing the 1988 OPUC report to the Oregon Legislature). Ratepayers should be protected if the renewable and non-renewable avoided cost rates accurately reflect the Utilities' thermal and renewable resource costs. Thus, allowing QFs to select among two resource options provides an appropriate incentive for the economic development of QFs that protects ratepayers and ensures that the Utilities do not pay rates higher than they would if they acquired electricity from another source.

The Utilities also argue that that the Commission cannot require them to purchase "RECs from QFs or mandate a level of compensation for RECs." Utilities Final Comments at 5. The Utilities fail to cite any precedent or cases in support of their arguments. The Utilities' position is noticeably at odds with rulings by the Federal Energy Regulatory Commission ("FERC"), which allows state commissions to

implement different avoided cost rates if they are based on actual differences in the costs that a utility avoids when purchasing power from the QFs, including environmental costs. California Public Utilities Commission, 133 FERC ¶ 61,059 at ¶¶ 27-31 (2010); American Ref-Fuel Co., 105 FERC ¶ 61,004 at ¶¶ 21-23 (2003), reh'g denied 107 FERC ¶ 61,016 (2004). If the QF is selling electricity that includes RECs, then those sales offset the need to acquire renewable resources, and the Commission has the authority to require that the QF be compensated based on the costs of a renewable resource, including specifying the amount of compensation for the RECs.

2. The Renewable Resource Deficiency Period Should Be Based on When the Renewable Resource Is Actually Needed

The Commission has solicited comments on how to determine the start of the renewable resource deficiency period. Docket No. UM 1396, Order No. 10-448 at App. A. Specifically, the Commission has asked whether the renewable resource deficiency period should be based on the Integrated Resource Plan (“IRP”) action plan identifying when a renewable resource would be avoided, or the start of a utility’s purchase of unbundled RECs. Id. The IRP action plan may be a reasonable starting point for analysis of when the renewable resource deficiency period begins, but that date should be modified based on actual utility plans or actions that demonstrate the utility needs renewable resources including, but not limited to, the purchase of unbundled RECs. In addition, the Commission also should consider information provided in the Utilities’ RPS implementation plans if they indicate a need for renewables different from the IRP. Therefore, ICNU proposes the renewable resource deficiency period should

start when the Utilities actually need renewable resources. The Commission should set this based on the earlier of the date provided in a utility plan (IRP or RPS implementation) for acquiring renewable resources or the date of any actual purchase of renewable resources, including unbundled RECs.

3. Out-of-State RPS Requirements Should Be Considered When Determining Whether a Renewable Resource Can Be Avoided

The Commission has requested that parties provide comments on whether out-of-state RPS requirements should be taken into account when determining whether a renewable resource can be avoided. Docket No. UM 1396, Order No. 10-448 at Appendix A. This issue was raised and commented on in earlier phases of the proceeding. ICNU previously suggested that renewable QFs should be allowed to sell renewable power and RECs to an Oregon utility to offset that utility's actual RPS needs, including those from other states or the federal government. ICNU Final Comments at 4-6. The Utilities did not raise any substantive concerns with the proposal, and Staff supported ICNU's recommendation. Utilities Final Comments at 6; Staff Final Comments at 2. ICNU continues to support its previous comments and recommends that the Commission not limit the proposal to only state RPS obligations, but to include any federal RPS requirements, if passed.

4. Renewable Avoided Costs Should Not Be Based on a Proxy Wind Resource Alone

The Commission has proposed that the renewable avoided cost rate be based on either the estimated costs of the renewable resources identified in an IRP action

plan, or a “proxy” resource approach similar to the current approach used for standard avoided costs. Docket No. UM 1396, Order No. 10-448 at App. A. Staff recommends that the renewable avoided cost rate be based on a proxy wind resource using the estimated fixed and variable costs and capacity factor in the Utilities’ IRPs. Staff Final Comments at 2.

In principle, ICNU does not oppose either an IRP or proxy resource-based approach, but the method of implementation is important. The IRP process is not an evidentiary proceeding that provides the parties an opportunity to contest the Utilities’ factual claims or to submit testimony. Avoided costs, in contrast, are actual rates which must be “just and reasonable.” ORS §§ 758.515, 758.525. If the Commission adopts an IRP based approach, ICNU recommends that the Commission ensure that the actual rates are subject to review in an evidentiary proceeding.

If the Commission elects to use a proxy resource approach similar to its current approach to standard avoided costs, the proxy resource should not be based solely upon the costs of a wind resource. The Utilities are currently acquiring or planning to acquire a variety of renewable resources, including, but not limited to, solar, geothermal, wind, and hydro improvements. E.g. PacifiCorp 2011 IRP at 8 (March 31, 2011).

Although ICNU understands Staff’s concerns regarding the administrative simplicity of a single proxy resource, ICNU recommends that the avoided renewable costs should be based on the costs of those renewable resources that are actually avoided, and not a single proxy resource.

A proxy wind resource is also likely to have significantly different operational characteristics than many of the renewable QFs selling power to the utilities. For example, hydro and biomass QFs have different capacity factors from wind and may operate more like a reliable base load resource than an intermittent wind resource. The different operational characteristics of these renewables should be taken into account because they may be more valuable than wind. The Commission already takes into account certain operational characteristics for QFs over 10 MWs, including a facility's reliability and dispatchability, and whether a facility avoids fossil fuel risk, certain transmission and distribution costs, and line losses. Docket No. UM 1129, Order No, 07-360 App. A at 1, 3-4. In addition, there are specific adjustments related to wind integration costs for wind QFs. *Id.* App. A at 4. This is consistent with FERC's regulations, which allow avoided cost rates to "differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies" and to account for operational characteristics like the capacity and energy of the QF. 18 C.F.R. §§ 292.304(c)(3)(ii), 292.304(e).

If the Commission elects to use a proxy resource-based approach, ICNU recommends that the Commission use different proxy resources for each type of QF, including wind, biomass, hydro and solar. In the alternative, the Commission could use a single proxy wind resource, but should provide detailed guidance regarding how the avoided costs for the proxy resource should be adjusted to account for the different operational characteristics of non-wind QFs.

5. A Planned Resource Is Avoidable When the Construction Is Substantially Complete

The Commission has requested comments regarding when a planned resource should be considered avoidable, potentially focusing on whether an irreversible commitment has been made to purchase or build the project. Docket No. UM 1396, Order No. 10-448 at App. A. For practical purposes, the date a resource is considered “avoidable” demarks the resource deficiency period (when the utility needs resources) from the resource sufficiency period (when the utility no longer needs resources). This a significant issue for both ratepayers and QFs because the Commission’s method for calculating avoided cost rates results in higher avoided costs during resource deficiency periods (the costs are based on an avoided thermal plant) than during resource sufficiency periods (the costs are based on market purchases). ICNU recommends that a planned resource be considered avoidable until it is substantially complete because of the uncertainty associated with utility resource planning and because of the Commission’s earlier conclusion to use an IRP approach to set the resource sufficiency and deficiency periods.

The Commission should not set a date for determining when a planned resource is avoidable based on whether an “irreversible commitment” has been made to the project. The Northwest and the nation have had numerous examples of generation projects that were planned and financed, saw equipment purchased and even construction commenced, but which were never actually completed, were completed in different forms than originally planned, or experienced significant unexpected delays. Uncertainties

associated with resource planning and construction are exacerbated by the potentially changing regulatory framework associated with climate change and renewable resources. Therefore, absent a clear and easily understood manner to determine whether a project is actually going to be completed, ICNU recommends that the resource be considered avoidable until it is substantially completed.

If the Commission elects to use an “irreversible commitment” as the demarcation for determining when a resource is considered avoidable, then the Commission should carefully define the term to recognize that a utility decision to build or purchase a new resource does not always mean that the resource will actually be placed in service. For example, the Commission could treat purchased resources differently from self-build resources and recognize that there are numerous factors that could result in the delay, alteration, or termination of the construction of a generation resource.

ICNU also recommends that the Commission not allow the Utilities to use an unplanned resource procurement to suddenly change the demarcation between resource sufficiency and deficiency periods. Some Utilities have required QFs to engage in protracted and contentious negotiations with QFs, and have not always been forthcoming with all relevant information, including the date or details regarding new avoided cost rate filings. Utilities should not be allowed to surprise QFs with sudden changes in avoided cost filings, including the date upon which they are considered resource sufficient or deficient.

III. CONCLUSION

ICNU recommends that the Commission adopt the following policies regarding the avoided cost issues in this case:

- Allow renewable QFs to select a renewable avoided cost rate if they sell their RECs to the Utilities or a non-renewable avoided cost rate if they keep their RECs, but the Commission should not require renewable QFs to sell at the renewable avoided cost rate if they elect to retain their RECs;
- Set the renewable deficiency period for the earlier of the IRP action plan date for acquiring renewable resources, or when the Utilities are actually acquiring renewable resources, including RECs;
- Account for out-of-state and federal RPS requirements when determining when a renewable resource can be avoided by purchasing from a QF;
- Set the renewable avoided cost rates based on the renewable resources the Utilities are actually planning to build, not a single resource; and
- Set the date for a planned resource acquisition when the resource is substantially completed.

Dated this 13th day of May, 2011.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion A. Sanger

Irion A. Sanger

Davison Van Cleve, P.C.

333 S.W. Taylor, Suite 400

Portland, OR 97204

Phone: (503) 241-7242

Fax: (503) 241-8160

mail@dvclaw.com

Of Attorneys for Industrial Customers of Northwest Utilities