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BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER THE PUBLIC UTILITY	)	
COMMISSION OF OREGON	)	CASE NO. UM-1396
	)	Phase II
Investigation into Determination of Resource	)	
Sufficiency, pursuant to Order No. 06-538	)	REPLY COMMENTS OF THE
	)	COMMUNITY RENEWABLE
	)	ENERGY ASSOCIATION

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Pursuant to the procedural order issued January 21, 2011 in this case, the Community Renewable Energy Association (“CREA”) hereby submits its Reply Comments in Phase II of this case regarding the issues raised by the Public Utility Commission of Oregon’s (“Commission’s”) Order No. 10-488. For the reasons set forth below, CREA continues to support adoption of a separate avoided cost stream for renewable resources if the Commission allows qualifying facilities (“QFs”) to choose the renewable resource avoided costs or the gas proxy or market rate avoided costs as described in these Reply Comments.

## REPLY COMMENTS<sup>1</sup>

CREA stands by its Opening Comments, and provides additional response to issues other parties have raised in their Opening Comments and at the Workshop held on May 24, 2011.

### I. Substantive Issues

#### A. **The Commission should provide QFs with the option to sell energy and capacity under the existing rate mechanism, or to sell energy, capacity, and environmental attributes under the new renewable resource rate stream.**

As noted in CREA's Opening Comments, FERC's recent ruling firmly establishes that a state utility commission has the authority to create a separate avoided cost rate structure for QFs ceding RECs to the utility if those RECs will help the utility to avoid costs it would otherwise incur to comply with a renewable portfolio standard ("RPS") pursuant to state law. *California Public Utilities Commission*, 133 FERC ¶ 61,059 (Oct. 21, 2010) (order granting clarification and dismissing rehearing), *rehearing denied*, 134 FERC ¶ 61,044 (January 20, 2011).

Oregon has an RPS with near-term targets for PacifiCorp and Portland General Electric, and far-term targets for Idaho Power. But the RPS goals are not limited to securing large-scale renewable energy facilities the utilities have primarily relied upon to date. Oregon's RPS also contains a goal that utilities obtain community-based renewable energy. Specifically, the Oregon RPS statute states:

The Legislative Assembly finds that community-based renewable energy projects are an essential element of Oregon's energy future, and declares that it is the goal of the State of Oregon that by 2025 at least eight percent of Oregon's retail electrical load comes from small-scale renewable energy projects with a generating capacity of 20 megawatts or less. All agencies of the executive department

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<sup>1</sup> CREA provided extensive procedural and legal background in its Opening Comments filed on May 13, 2011, which these Reply Comments incorporate by reference.

as defined in ORS 174.112 shall establish policies and procedures promoting the goal declared in this section.

ORS § 469A.210.

As an agency of the executive department, the Commission should therefore implement FERC's new PURPA precedent in a manner that actually encourages community scale renewable energy projects. Despite the assertions of some parties in opening comments, federal and state laws enable the Commission to provide renewable QFs with the option to either (1) to sell the energy, capacity, and environmental attributes of their projects, or (2) to sell only the energy and capacity and retain the environmental attributes.

- 1. CREA generally supports use the IRP Action Plan to identify when a renewable resource acquisition would be avoided, but CREA submits the Commission should clearly state that when a utility is meeting its RPS in significant part with a purchase of unbundled renewable energy credits ("RECs"), it will be renewable deficient.**

Commission Staff's Opening Comments, in Figures A and B, accurately characterize how a renewable avoided cost rate mechanism would work with the existing avoided cost mechanisms. The online date for the renewable resource cited in the IRP Action Plan would be the date that triggers a change in payment to the QF which enters into a contract prior to that date. All parties appear to agree on this point.

There is disagreement, however, on the effect of a purchase of unbundled RECs. PacifiCorp asserts that "PURPA and FERC precedent prohibit the renewable avoided cost stream from reflecting an avoided purchase of an unbundled REC." *PacifiCorp's Opening Comments*, at p. 7; *see also Commission Staff's Opening Comments*, at p. 3. This position is in direct contradiction to the recent FERC precedent. FERC had "previously found that an avoided cost rate may not include a 'bonus' or 'adder' above the calculated full avoided cost of the purchasing

utility to provide additional compensation for, for example, environmental externalities above avoided costs.” *California Public Utilities Commission*, 133 FERC ¶ 61,059, at ¶ 31. However, “if the environmental costs are real costs that would be incurred by utilities, then they may be accounted for in a determination of avoided cost rates.” *Id.*<sup>2</sup>

The utility’s alternative cost of compliance with the RPS would be incurred by (1) building a utility-owned renewable generation facility, (2) entering into a non-PURPA power purchase agreement for bundled energy, capacity, and RECs, *or* (3) by securing “brown” energy and capacity and purchasing unbundled RECs. The renewable QF would allow the utility to avoid the cost of environmental compliance regardless of which of these three options the utility would otherwise pursue to achieve compliance for the incremental amount of RECs provided by the QF. The alternative cost of compliance the utility would incur by purchasing unbundled RECs is a real cost the Commission may take into consideration in setting renewable avoided cost rates.

Some parties characterize all purchases of unbundled RECs as analogous to “spot market” energy purchases, which should not be considered equivalent to the long-term avoided cost of compliance a renewable QF would enable the utility to avoid. *See PacifiCorp’s Opening Comments*, at p. 6; *PGE’s Opening Comments*, at pp. 2-3. CREA respects Commission Staff’s position that the Oregon utilities may not currently be planning to meet their RPS targets with unbundled RECs. *See Commission Staff’s Opening Comments*, at p. 2. Nevertheless, utilities

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<sup>2</sup> It is important to note that FERC overruled prior precedent that could have been read to preclude a two-tiered rate structure providing QFs with a higher rate stream if they help the utility avoid not only the costs of the energy and capacity provided, but also the cost of compliance with a state environmental or procurement law. *See id.* at ¶ 30 (expressly overruling *Southern California Edison Co.*, 70 FERC ¶ 61 (1995)). PacifiCorp’s argument relies on this overruled theory of the law.

may need to purchase substantial amounts of unbundled RECs despite their current plans.<sup>3</sup> That the utilities, in general, may now be planning to acquire renewable resources rather than purchase unbundled RECs does not change the fact that a utility purchase of unbundled RECs is a real cost of environmental compliance renewable QFs would help the utility avoid. Therefore, the Commission should allow for the following occurrences to trigger a renewable deficiency period: (1) future purchases of unbundled RECs planned in an IRP Action plan, or (2) an RPS Implementation Plan which reveals that, despite the IRP Action Plan statement otherwise, the utility has used purchases of unbundled RECs to meet its RPS requirement in significant part.

**2. The Commission should take out-of-state RPSs into account for PacifiCorp because PacifiCorp does not make its renewable acquisitions based on the Oregon RPS alone.**

This issue only affects PacifiCorp. If an out-of-state RPS imposes a cost on PacifiCorp that it can avoid by purchasing a renewable QF's bundled electrical output and RECs, then PacifiCorp must compensate the QF for that avoided RPS cost the same as the utility must compensate the QF for any other avoided cost. Commission Staff asserts that, under the current and proposed interstate allocation methodology, costs for RPS compliance exceeding the costs the utility would otherwise incur are assigned to the state adopting the RPS, and therefore out-of-state RPSs are irrelevant to PacifiCorp's avoided costs. *Commission Staff's Opening Comments*, at p. 2. However, Commission Staff does not assert that this mechanism has ever been used in

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<sup>3</sup> For example, with the curtailments of wind generators occurring in Bonneville Power Administration's balancing authority, some utility-owned projects may generate far less RECs than anticipated. See *Administrator's Final Record of Decision, BPA's Interim Environmental Redispatch and Negative Pricing Policies*, p. 20 (May 13, 2011), available online at [http://www.bpa.gov/corporate/pubs/RODS/2011/ERandNegativePricing\\_FinalROD\\_web.pdf](http://www.bpa.gov/corporate/pubs/RODS/2011/ERandNegativePricing_FinalROD_web.pdf) (stating that curtailments in 2011 alone could amount to \$50 million in lost REC and production tax credit value). This and other unexpected contingencies could require purchases of large quantities of unbundled RECs in the future years to meet the utilities' RPS targets.

practice, and marking and tracking the Oregon-specific RPS compliance actions in avoided cost proceedings may be impossible. PacifiCorp itself states, “PacifiCorp’s acquisition of renewable resources are all done on a system basis . . . and are not acquired to meet any individual states [sic] RPS requirements.” *PacifiCorp’s Opening Comments*, at p. 6. PacifiCorp’s actions with regard to acquisition of renewable resources or unbundled RECs on a system-wide basis should therefore trigger the beginning of a renewable deficiency period.

**3. The renewable avoided cost should be based on a “proxy” resource approach that takes into account all of the avoided costs.**

The parties appear to disagree on the methodology by which the Commission should calculate the renewable avoided cost rates. CREA agrees with PGE that an “attempt to establish costs using the specific resources listed in the IRP faces numerous difficulties.” *PGE’S Opening Comments*, at p. 3. A proxy is the Commission’s recognized approach for the current non-renewable avoided cost stream, and is the better approach for a renewable avoided cost stream.

The Commission should reject Idaho Power’s request to use its “IRP Methodology” to calculate published avoided cost rates for QFs up to 10 MW in size. *See Idaho Power’s Opening Comments*, at pp. 3-9, 11. Despite Idaho Power’s assertion that doing so would allow for administrative efficiency in its two jurisdictions, *id.* at p. 2, the Idaho Public Utilities Commission has only authorized Idaho Power to use the IRP Methodology to calculate published avoided cost rates for projects not entitled to published rates, and Idaho Power has used it in only two approved PURPA contracts since 1995.<sup>4</sup> The most obvious disadvantage of the IRP

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<sup>4</sup> *See Petition for Reconsideration of the Northwest and Intermountain Power Producers Coalition*, Idaho PUC Case No. GNR-E-10-04, pp. 10-16, & Attachment 1 (Feb. 28, 2011) (arguing that the IRP Methodology has been implemented for projects over the published rate eligibility threshold in Idaho to provide rates that are less than the true avoided costs and thereby

Methodology is that it would allow Idaho Power to use a black box model – its AURORA energy supply model – to calculate published avoided cost rates in each bi-annual IRP process. The critical inputs would change for each QF resource type every other year, at a minimum, and proper implementation would require substantial intervenor and Commission Staff oversight. Also, Idaho Power’s comments do not seem to even address REC ownership. The IRP Methodology described by Idaho Power would only calculate the value of the energy, not the associated RECs. The entire premise of this docket is to provide renewable QFs with an avoided cost stream that compensates them for all attributes of their bundled energy and RECs. Idaho Power’s proposal is simply incomplete and beyond the scope of this docket.

If the Commission chooses to pursue a renewable proxy, CREA would prefer that an independent institution, such as Lawrence Berkeley National Laboratories, design the proxy with input from the parties and approval by the Commission. Once developed, the inputs to the proxy can be updated on the same bi-annual IRP cycle as the existing gas SAR. Some parties appear to assert that the levelized costs of the capital and operation and maintenance expenses for a large commercial wind plant should be the proxy resource. *See PGE’s Opening Comments*, at p. 4; *Commission Staff’s Opening Comments*, at p. 3. CREA agrees that a wind plant may be the appropriate proxy, but for small QFs under 10 MW taking the published rates the Commission

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violates FERC’s PURPA regulations); *In the Matter of the Joint Petition of Idaho Power Company, Avista Corporation, and PacifiCorp dba Rocky Mountain Power to Address Avoided Cost Issues and to Adjust the Published Avoided Cost Rate Eligibility Cap*, Idaho PUC Case No. GNR-E-10-04, Order No. 32216, p. 14 (March 26, 2011) (ruling on reconsideration that “the Commission intends to examine and address NIPPC’s concerns in a subsequent case”). As of the date of this filing, the Idaho Commission has not yet even issued a procedural order in Phase 3 of the Idaho PURPA dockets, which will address the accuracy of the IRP Methodology. *See Phase 3 - Analyzing SAR and IRP Methodologies*, Idaho PUC Case No. GNR-E-11-03 (opened June 7, 2011).

should state that the proxy will consider the additional avoided costs when compared to a large utility-owned wind project. For example, small QFs enable utilities to avoid costs of interconnection and transmission. An Oregon QF under 10 MW must pay for all interconnection facilities, and must even pay for any transmission system upgrades to the purchasing utility's system that are "necessitated by the interconnection of the small generator interconnection." Order No. 09-196, p. 5; *see also* OAR 860-029-0020(4), -0060. An off-system QF must pay to wheel its output to a point of delivery under a point-to-point transmission agreement with a third party, and the utilities' standard QF contracts decrease avoided cost payments for line losses prior to reaching the point of delivery.

In contrast, rate payers pay for the cost to interconnect and transmit the output of a large utility-owned wind project.<sup>5</sup> Many of these projects may be located in Wyoming now that many of the best sites in Oregon have been developed.<sup>6</sup> Additionally, smaller, distributed projects interconnecting at different locations are more likely to be able to use existing distribution and transmission infrastructure than a single large project requiring a large amount of transmission

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<sup>5</sup> Even for non-utility projects interconnecting under FERC's rules, independent developers receive a refund for the entire cost of network transmission upgrades required for their projects under FERC interconnection rules. *See Standardization of Small Generator Interconnection Agreements and Procedures*, FERC Order No. 2006, at ¶ 40, Docket No. RM02-12 (May 12, 2005) (addressing Small Generator Interconnection Agreements and cross referencing same rule in Order No. 2003 regarding Large Generator Interconnection Agreements). Small Oregon QFs do not receive such a refund.

<sup>6</sup> *See PGE's 2009 IRP*, Docket No. LC 48, pp. 124-25. PGE estimates that a Northwest wind project with a capacity factor of 33% costs about one-third less than a Wyoming wind project with a capacity factor of 37% because of transmission. *Id.* at pp. 157-58; *see also PacifiCorp's 2011 IRP*, Docket No. LC 52, p. 128.



capacity at a single point of interconnection.<sup>7</sup> Adders to the wind proxy will be necessary to take into account the avoided costs of interconnection and transmission that small, distributed renewable QFs will allow the utility to avoid by using existing transmission and distribution capacity. *See California Public Utilities Commission*, 133 FERC ¶ 61,059, at ¶ 31; 18 C.F.R. § 292.304(e)(2)(vii), (e)(4).

At the Workshop held on May 24, 2011, some parties appeared to want to revisit the recently resolved issue of a wind integration charge for small QFs. However, because of the obvious benefits that distributed, small QFs provide, the Commission should not reverse its prior determination precluding utilities from discounting published avoided cost rates for small intermittent QFs. *See Order No. 07-360*, at pp. 23-25. By properly implementing FERC's PURPA regulations in this manner, the Commission would also be adhering to the requirement to establish policies promoting the goal in Oregon's RPS that by 2025 at least 8% of load comes from small-scale renewable energy projects sized 20 MW or less. *See ORS § 469A.210*.

**4. When should the renewable avoided cost stream reflect an avoided purchase of an unbundled renewable energy certificate?**

CREA addressed this issue above.

**B. The Commission should reject the assertion that renewable QFs should be forced to cede RECs in exchange for a lower avoided cost rate than non-renewable QFs.**

Most parties appear to agree that a renewable QF should have the choice of whether to sell under the traditional avoided cost rate stream and retain its RECs, or sell under the

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<sup>7</sup> According to PGE, "Distributed generation has well - known advantages over central station generation: it provides enhanced localized reliability; it is more efficient because it avoids line losses; . . . ; and it can help defer transmission and distribution (T&D) investment." *PGE's 2009 IRP*, Docket No. LC 48, p. 148.

renewable avoided cost stream and cede its bundled RECs.<sup>8</sup> PacifiCorp, however, asserts if the renewable avoided cost stream is lower than the non-renewable stream, the renewable QF should be forced to cede its RECs and accept the lower renewable avoided cost stream. *See PacifiCorp's Opening Comments*, at p. 9. The Commission should reject this argument for several reasons.

First, a properly calculated renewable avoided cost rate for small QFs should be higher than the rate calculated under the gas proxy if the renewable proxy rate properly accounts for the avoided cost factors discussed above.

Second, even assuming the renewable proxy may generate a lower rate, PacifiCorp's argument would result in a drastic change in Oregon energy policy without supporting direction from the legislature. Oregon QFs retain the RECs under the gas proxy rates or the alternative market rates. *See No. 05-1229*, at p. 8. That was the case when Oregon passed its RPS statute in 2007, and the Oregon legislature therefore implicitly affirmed the Commission's policy by not altering the Commission's rule. The Commission would undo this policy if it were to now implement a new, lower avoided cost stream, which wind or other renewable QFs must accept and under which the QFs must cede the RECs.

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<sup>8</sup> The Oregon Department of Energy appears to have a concern with whether the *California Public Utilities Commission* decision allows for the Commission to provide QFs with choice regarding REC ownership and/or different avoided cost streams. *See Oregon Dept. of Energy's Opening Comments*, at pp. 4-5. However, the decision held that "a state may separately provide additional compensation for environmental externalities, outside the confines of, and, in addition to the PURPA avoided cost rate, through the creation of renewable energy credits (RECs)." 133 FERC ¶ 61,059, at ¶ 31 (emphasis added). Because Oregon law created RECs, the Oregon PUC can provide QFs the option to receive additional compensation should they choose to sell bundled RECs with PURPA energy and capacity.

Third, and perhaps most importantly, adopting PacifiCorp's proposal would provide renewable QFs with worse economic prospects than the current implementation of PURPA. To do so when the current rates accurately calculate the avoided costs of energy and capacity alone, would directly contradict the requirement that the Commission establish polices to reach 8% of generation from small-scale renewable energy projects by 2025. *See* ORS § 469A.210.

**C. The Commission should determine that, for purposes of determining the start of a resource sufficiency period, the planned resource acquisition should be avoidable until the project is online.**

The parties appear to agree that the utility's IRP Action Plan will be used to determine when the resource sufficiency and deficiency periods will begin and end. CREA therefore understands this issue as a question regarding what events in the procurement or development of a major resource should render deficiency period rates unavailable to QFs despite the rate schedule produced as a result of the most-recent IRP Action Plan. CREA stands by its position in its opening comments that allowing for changes in between IRP Action Plans allows for gaming by the utilities that will result over the long term in rates below the actual avoided costs. *See CREA's Opening Comments*, at pp. 11-12. If the Commission will allow for updates to the sufficiency period, the Commission should ensure the utilities pay QFs the full avoided costs by making the resource deficiency period applicable until the utility's new planned resource is online, not at some earlier time.

Further, the Commission should institute rules to protect QFs engaged in the negotiating process for a contract at the time that the rates change in between the regular 2-year IRP cycles. QFs are frequently frustrated in the attempt to secure a contract at a time when the utility knows it is nearing a point when it will file an avoided cost rate decrease. Some QFs may be able to

expect a rate change after an IRP cycle, but very few QFs will be able to expect a rate change in between cycles. The litigation that resulted from PacifiCorp's last unexpected rate decrease demonstrates this problem. *See Farmers Irrigation District v. PacifiCorp*, Docket No. UM 1441; *International Paper Company v. PacifiCorp*, Docket No. UM 1449; *Energy Recovery Group v. PacifiCorp*, Docket No. UCB 44; *Swalley Irrigation District v. PacifiCorp*, Docket No. UM 1438. Frequent rate changes undermine the purpose of publishing avoided cost rates and discourage investment in small community renewable energy projects.

If the Commission is going to provide another mechanism by which the rates may change unexpectedly, it should establish explicit rules requiring the utility to provide QFs engaged in discussions with the utility at least 90 days actual notice prior to the rate change becoming effective for that QF. That may at least provide the QF with some opportunity to obligate itself to a long-term contract prior to an unexpected rate change, and may mitigate the gaming by the utilities over the long term.

## **II. Procedural Issues**

CREA continues to believe the Commission need not hold any evidentiary proceedings in this phase of the case addressing legal and policy issues, but that the fact-specific inquiry needed to set each utility's individual renewable avoided cost rates requires separate evidentiary proceedings for each utility.


## **CONCLUSION**

The Community Renewable Energy Association respectfully requests that the Commission initiate evidentiary proceedings to develop a separate avoided cost stream for renewable resources which will allow renewable qualifying facilities to choose the renewable

resource avoided costs or the gas proxy or market rate avoided costs as described in these Reply Comments.

RESPECTFULLY SUBMITTED this 28th day of June, 2011.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 28th day of June, 2011, a true and correct copy of the within and foregoing **COMMUNITY RENEWABLE ENERGY COALITION'S PHASE II REPLY COMMENTS** was served as shown to:

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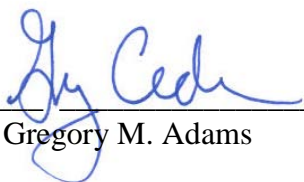
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