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VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
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Re: Docket UM 1396

Enclosed for filing in the above docket are an original and five copies of PacifiCorp's Reply Comments. A copy of this filing has been served on all parties to this proceeding as indicated on the attached Certificate of Service.

Very truly yours,

Amie Jamieson

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1396
Phase II

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

Pursuant to Public Utility Commission of Oregon (Commission) Order No. 10-488 and the Prehearing Conference Memorandum issued by Administrative Law Judge (ALJ) Patrick Power in this proceeding on January 21, 2011, PacifiCorp d/b/a Pacific Power (the Company) respectfully submits these Reply Comments in response to the comments filed by Commission Staff, the Oregon Department of Energy (ODOE), Portland General Electric Company (PGE), Idaho Power Company (Idaho Power), the Industrial Customers of Northwest Utilities (ICNU), Renewable Energy Coalition (Renewable Energy), Community Renewable Energy Association (CREA), and Northwest Energy Systems Company (NESCO). The parties participated in a workshop to discuss the comments on May 23, 2011.

I. DISCUSSION

Substantive Issues

A. Should the Commission require that each utility determine its avoided cost for a renewable resource? If so, how should the Commission decide what renewable resource would be avoided and at what cost?

The parties filing opening comments in this proceeding are generally in agreement that implementing an avoided cost stream for renewable resources is consistent with the Public Utility Regulatory Policies Act (PURPA).[1] The parties, however, differ on many key elements

[1] ODOE stated that it could not respond in depth at this stage, but appears to support establishing an avoided cost stream for renewable resources.

required to implement an avoided cost framework that includes a separate renewable avoided cost stream for renewable QFs. Many of the parties' proposals would add significant complexity to the calculation of avoided cost with little, if any, corresponding benefit. In addition, some proposals are contrary to PURPA. These Reply Comments clarify and modify the Company's Opening Comments with the intent of establishing a straightforward avoided cost framework with separate cost streams for renewable and non-renewable QFs that is consistent with the Commission's existing avoided cost framework and with PURPA.

1. Should the IRP Action Plan be used to identify when a renewable resource acquisition would be avoided, or should a utility purchase of unbundled renewable energy credits signal the start of a renewable resource deficiency period?

a. The IRP Action Plan Should be the Basis for the Renewable Avoided Cost.

As discussed in Opening Comments, PacifiCorp agrees with Staff that the Integrated Resource Plan (IRP) should be used to determine whether the utility is sufficient or deficient for both renewable and non-renewable QFs. ODOE raised the question at the workshop of whether the Renewable Portfolio Standard (RPS) Implementation Plan filed pursuant to ORS 469A.075 and OAR 860-083-0400 would be the more appropriate to use for determining when the renewable deficiency period starts. Staff explained its position that the RPS Implementation Plans did not contain the information necessary to determine renewable resource deficiency for purposes of calculating avoided costs.

PacifiCorp agrees with Staff's position stated at the workshop. First, the calculation of incremental costs included in the Implementation Plan is not a consistent methodology as is the calculation of avoided costs. Fundamentally, the calculation of avoided costs for a renewable resource stream should be consistent with the calculation of the avoided costs for a non-renewable resource stream, with the primary difference being the proxy resource. The incremental costs in the Implementation Plan are a construct included in ORS 469A.075 for purposes of calculating only the cost limitation of complying with the RPS.

Second, the Implementation Plan covers only five years, which may not sufficiently reflect a period required for a determination of resource sufficiency/deficiency for purposes of setting a renewable resource avoided cost rate.

Lastly, the Implementation Plan is by design consistent with the IRP and, in fact, is required to occur on a timeline consistent with IRPs. OAR 860-083-0400 also includes a provision that requires further explanation to be included in the Implementation Plan if there are material differences between the Implementation Plan and the IRP.[2] If at the time of acknowledgement of the IRP the Commission determines that the Implementation Plan contains a material difference from the IRP related to the procurement timing of a major renewable resource, then the Commission can include as part of its acknowledgement a requirement that the electric company file updated avoided costs for a renewable resource avoided cost stream. However, any material difference should be limited to a change in a procurement decision for a major resource and not tied to the identification of the use of unbundled RECs or an alternative cost payment as these are outside the purview of PURPA, as discussed below.

b. Unbundled RECs Should Not Be Used to Demarcate the Start of the Deficiency Period.

ICNU and CREA propose that the purchase of unbundled RECs should indicate the start of the renewable deficiency period.[3] For the reasons discussed in Staff's, PGE's, and the Company's opening comments, the purchase of unbundled RECs should not be used to

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[2] *See* OAR 860-083-0400(4).

[3] Opening Comments of ICNU at 7; Opening Comments of Community Renewable Energy Association at 9.

demarcate the start of the renewable deficiency period. First, purchases of unbundled RECs may be used for purposes other than RPS compliance and do not necessarily indicate that the utility is deficient with respect to renewable resources. Second, the IRP Action Plan does not include unbundled RECs because unbundled RECs are irrelevant to meeting energy and capacity requirements. Therefore, using unbundled RECs to determine renewable deficiency is inconsistent with using the IRP Action Plan to determine resource sufficiency, which the Commission has already decided "is the appropriate venue for addressing resource sufficiency/deficiency issues."[4] Third, using unbundled RECs in the determination of avoided costs is inconsistent with PURPA. FERC explicitly stated in its October 21, 2010 order that "RECs are separate commodities from the capacity and energy produced by QFs" and that "[c]ompensation for . . . environmental externalities through RECs is outside of PURPA, and is not part of the avoided cost calculation."[5] For this reason, PURPA does not allow for the use of unbundled RECs when calculating avoided costs.

PacifiCorp continues to support the use of the next avoidable renewable resource identified in the IRP preferred portfolio to determine the start of the resource sufficiency period. PacifiCorp clarifies that the period should be based on the next major avoidable renewable resource. First, this treatment is consistent with the existing framework for determining non-renewable resource deficiency. Second, because PacifiCorp may be required to secure small amounts of renewable resources to meet specific renewable mandates outside of PURPA, small renewable acquisitions in the IRP may not reflect purchases that are avoidable by QF purchases.

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[4] Order No. 10-488 at 8.

[5] *Cal. Pub. Util. Comm'n*, Order Granting Clarification and Dismissing Rehearing, Docket No. EL 10-64-001, 133 FERC ¶ 61,059 at n.62 (Oct. 21, 2010); *see Am. Ref-Fuel Co.*, Docket No. EL03-133-001, Order Denying Rehearing ¶ 15 (Apr. 15, 2004).

c. Proposals to Consider the Date of an Actual Purchase of a Renewable Resource in Evaluating Resource Sufficiency is Unworkable.

ICNU proposes that the IRP Action Plan may be a reasonable starting point for establishing when the renewable deficiency period begins, but that the date should be modified based on actual utility plans or actions.[6] ICNU's proposal is inconsistent with the manner in which QF contract prices are developed. QF contracts reflect avoided costs in effect at the time the QF enters into a contract and the resource deficiency date is used to establish the price of the QF contract at the start of the contract. The price is not revised during the term of the contract. ICNU's proposal to consider the date of any actual purchase of renewable resources to calculate the renewable resource deficiency period is therefore inconsistent with the practice of setting QF contract prices on a long-term basis.

Similarly, CREA argues that the Commission should base avoided costs on the resource deficiency period until the utility's planned resource is on line.[7] CREA's proposal is unworkable for the same reason as ICNU's—parties cannot set long-term contract rates if the rates are subject to change years later.

ICNU's and CREA's proposals are also inconsistent with the Commission's decision that the earliest date in the range of on-line years for a resource in the IRP will set the date for resource deficiency.[8] There is no reasonable basis to change the Commission's decision on this issue in the context of renewable resources.

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[6] Opening Comments of ICNU at 7.

[7] Opening Comments of the Community Renewable Energy Association at 12.

[8] Order No. 0-488.

2. Should out-of-state renewable portfolio standards be taken into account when determining when a renewable resource can be avoided by a purchase from an Oregon QF?

As the Company explained in its Opening Comments, this issue is moot because the Company performs its planning on a system-wide basis and not driven by individual states' RPS requirements. Staff notes that the Company's allocation methodology requires costs associated with a renewable portfolio standard that exceed the costs the utility would have otherwise incurred are assigned on a situs basis to that state.[9] Because the Company acquires renewable resources on the basis of cost-effectiveness and risk mitigation, not to meet individual RPS requirements, using the Company's IRP Action Plan to determine renewable deficiency does not implicate Staff's concern related to allocation of renewable resource costs to individual states.

A related issue discussed at the workshop was whether QFs that qualify for another state's RPS would be eligible to receive the renewable avoided cost stream if it did not qualify as a renewable resource under the Oregon RPS. The Company's position is that only QFs qualifying under the Oregon RPS could receive the renewable avoided cost stream. The Oregon legislature has determined which types of facilities should be considered renewable energy producers in Oregon. It would be inconsistent with this policy to allow other types of producers to be treated as a renewable for purposes of calculating and paying avoided costs.

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[9] Staff Opening Comments at 2.

3. Should the renewable avoided cost be based on the estimated cost of the renewable resources identified in the IRP Action Plan, or should the Commission use a "proxy" resource approach similar to the current approach used by PGE and PacifiCorp for standard avoided costs?

a. The Avoided Cost for Renewable QFs Should Be the Market Price During the Renewable Resource Sufficiency Period and a Wind Proxy During the Renewable Resource Deficiency Period.

PacifiCorp agrees with Staff's approach on calculation of renewable avoided costs, with one caveat. PacifiCorp proposes that when the utility is renewable resource sufficient, the avoided cost will be the market rate; when the utility is renewable resource deficient, the avoided cost will be the cost of the proxy resource. However, the Company does not agree that the avoided cost during a period of renewable sufficiency but non-renewable resource deficiency should be the non-renewable proxy resource, or CCCT.[10] As explained below in the discussion of whether a renewable QF can choose between a renewable and non-renewable avoided cost stream, PacifiCorp proposes that the Commission establish two straightforward avoided cost streams—one for renewable QFs and one for non-renewable QFs. The renewable avoided cost stream would include one deficiency period to demarcate when the utility is no longer renewable resource sufficient.

The proxy resource during the deficiency period should be a utility-scale wind plant. In PacifiCorp's case, this is the type of major renewable resource the utility would be building but for the purchase from the QF. Therefore, this is the resource that would be avoided by virtue of a purchase from a renewable QF. If circumstances change and PacifiCorp is in the future investing in other types of major renewable resources, the Commission can at that point consider establishing a different renewable proxy.

[10] See Staff Opening Comments at 5.

ICNU recommends that avoided renewable costs be based on the cost of "those renewable resources that are actually avoided, and not a single proxy resource."[11] This proposal is a significant departure from the Commission's existing avoided cost framework. Under the current avoided cost framework, a utility is considered energy sufficient until its next major resource acquisition. Similarly, PacifiCorp proposes that the next major renewable resource acquisition demarcate the renewable deficiency period. During the deficiency period, then, the purchase from the renewable QF would be avoiding the major renewable resource, not the specific type of renewable resource the QF represents. There is therefore no basis for calculating avoided costs based on the specific nature of the renewable QF.

NESCO proposes calculating different avoided costs for intermittent and baseload renewable resources.[12] This proposal is unnecessary and is inconsistent with the IRP since the Company does not have a baseload renewable resource in its IRP Action Plan that can be avoided. As is discussed further below, the parties generally agree that renewable QFs can choose the renewable or non-renewable avoided cost stream, there is no reason to calculate a separate avoided cost for baseload renewable resources. Therefore, a baseload QF could choose to receive the avoided cost for non-renewable resources—a natural gas CCCT—and retain the RECs. This outcome would result in an appropriate avoided cost for renewable baseload resources in the event the renewable avoided cost based on a renewable proxy would not reflect the avoided cost of a baseload resource.

b. The Commission Should Reject Proposals to Increase the Complexity of the Development of the Avoided Cost.

PacifiCorp objects to implementing additional procedures that ICNU and CREA have proposed. ICNU and CREA propose developing the renewable proxy resource in a separate

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[11] Opening Comments of ICNU at 9.

[12] Comments of NESCO at 1.

docket with full evidentiary rights.[13] These proposals would unnecessarily and significantly increase the time and cost associated with establishing avoided costs with little or no additional benefit. Repeating a full evidentiary hearing similar to UM 1129 to vet the resource costs from the IRP process will be both time-consuming and redundant. Resource costs in the IRP Action Plan are already well documented and are publicly reviewed and vetted through workshops and presentations. There should not be a different standard for the basis of a renewable avoided cost stream versus the non-renewable avoided cost stream.

CREA also proposes that if the Commission allows the utility to rely on the IRP Action Plan to develop the proxy cost, the Commission should require "compelling evidence" in future rate cases for recovery of costs associated with a utility's self-built resource.[14] There is no basis to create a new evidentiary standard for evaluating utility self-build resources. Proposing changes to the prudence review of a utility's self-build resource is beyond the scope of this docket.

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

The Company agrees with Staff that the avoided cost stream should never reflect purchase of unbundled RECs, because doing so would be contrary to PURPA.[15] FERC found that the avoided cost can be calculated based on the cost of energy and capacity from certain types of resources when the state requires the utility to purchase from such resources.[16] FERC did not find that the avoided cost can include more than energy and capacity.

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[13] Opening Comments of ICNU at 9; Opening Comments of the Community Renewable Energy Association at 8.

[14] Opening Comments of the Community Renewable Energy Association at 9.

[15] Staff Opening Comments at 3.

[16] *Cal. Pub. Util. Comm'n*, Order Granting Clarification and Dismissing Rehearing, Docket No. EL 10-64-001, 133 FERC ¶ 61,059 at ¶ 26 (Oct. 21, 2010).

For this reason, PacifiCorp opposes PGE's proposal to add an estimated value of RECs to the avoided cost during the sufficiency period. Moreover, no liquid market for RECs currently exists, so the Commission could not reasonably establish a price for RECs.

B. Should the Commission require that a renewable QF be able to choose among two avoided cost streams – the renewable avoided cost stream, and the non-renewable avoided cost stream?

The parties appear to be in agreement that renewable QFs receiving the renewable avoided cost stream should be required to cede RECs during the renewable deficiency period. With respect to the sufficiency period, PacifiCorp proposes that renewable QFs choosing the renewable cost stream also cede RECs during the sufficiency period. As discussed above, PacifiCorp proposes that the Commission establish an avoided cost stream for renewable QFs that takes into account only renewable resource sufficiency and deficiency. If the renewable QF chooses the renewable avoided cost stream, it would cede RECs to the utility during the entire contract period.

PacifiCorp continues to support the ability of QFs to choose whether to accept the renewable or non-renewable avoided cost stream. Allowing such a choice, however, raises the concern that if the renewable avoided cost stream is lower than the non-renewable avoided cost stream, allowing the renewable QF to receive the higher stream simply by deciding to keep RECs would conflict with PURPA's mandate that QFs receive only the avoided cost of energy and capacity. PacifiCorp has refined its position based on concerns expressed at the workshop that renewable baseload QFs are differently situated from wind QFs with respect to this concern. Therefore, PacifiCorp proposes that when the renewable avoided cost stream is lower than the non-renewable avoided cost stream, assuming that the proxy resource used to calculate renewable avoided costs is a wind resource, wind QFs should not be allowed to choose the non-renewable avoided cost stream.

While the majority of parties to the docket support the ability of renewable QFs to choose between the renewable and non-renewable avoided cost streams, the Commission may wish to consider requiring a renewable QF to cede RECs to the utility and not allow the choice of a non-renewable avoided cost stream. Oregon has a significant RPS requirement—larger than any other state in PacifiCorp's jurisdiction. RECs retained by an Oregon QF and sold for use in meeting other states' REC requirements means those RECs will not be used to meet Oregon's RPS and will increase the cost to Oregon customers of RPS compliance.[17]

C. When is a planned resource acquisition avoidable?

1. If no irreversible commitment has been made to the project, is the project avoidable?

2. What constitutes an irreversible commitment?

Based on the parties' discussion at the workshop, the Company believes that the questions related to avoidability and irreversibility are asking the same question discussed above: How should the Commission decide what renewable resource would be avoided? As explained above, the Company's position is that the next major renewable resource included in the Company's IRP demarcates the time when the utility is no longer renewable resource sufficient. The Commission recently decided that with respect to non-renewable QFs, the deficiency period is based on the earliest on-line date of a major resource in the IRP Action Plan.[18] There is no basis to add determinations of avoidability and irreversibility to the determination of renewable resource sufficiency.

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[17] Any such inquiry would need to include an evaluation of OAR 860-022-0075, which states that unless agreed to otherwise, QFs retain ownership of RECs under PURPA contracts.

[18] Order No. 10-488 at 8.

Procedural Issues

A. Which of these issues should be the subject of evidentiary proceedings?

The parties generally agree that these issues are legal and policy in nature and should not be subject to evidentiary proceedings. PacifiCorp continues to support this position.

B. Should the evidentiary proceedings be generic, or conducted on a utility-by-utility basis?

Given that Idaho Power has proposed a unique framework for calculating its avoided costs, if the Commission decides that evidentiary proceedings are appropriate, those proceedings may be more appropriately conducted on a utility-by-utility basis.

II. CONCLUSION

PacifiCorp recommends that the Commission establish an avoided cost framework that includes an avoided cost stream for renewable QFs consistent with the Company's Reply Comments.

DATED: June 28, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1396 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

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