



825 NE Multnomah, Suite 2000
Portland, Oregon 97232

October 21, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

RE: UM 1799 – PacifiCorp’s Answers and Affirmative Defenses

Under ORS 756.512 and OAR 860-001-0400, PacifiCorp d/b/a Pacific Power files its answers and affirmative defenses to the complaint filed by Cypress Creek Renewables, LLC in the above-referenced docket.

If you have any questions about this filing, please contact Natasha Siores at (503) 813-6583.

Sincerely,

A handwritten signature in black ink that reads "R. Bryce Dalley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

R. Bryce Dalley
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1799**

CYPRESS CREEK RENEWABLES,
LLC

Complainant,

vs.

PACIFICORP D/B/A PACIFIC POWER

Defendant.

PACIFICORP'S ANSWERS AND
AFFIRMATIVE DEFENSES

I. INTRODUCTION

Under ORS 756.512 and OAR 860-001-0400, PacifiCorp d/b/a Pacific Power files its answers and affirmative defenses to the complaint filed by Cypress Creek Renewables, LLC on October 11, 2016.

Communications regarding this complaint should be addressed to:

Oregon Dockets
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232
Phone: 503.813.5542
Email: oregondockets@pacificorp.com

Dustin Till
PacifiCorp
825 NE Multnomah, Suite 1800
Portland, Oregon 97232
Phone: 503.813.6589
Email: dustin.till@pacificorp.com

PacifiCorp requests that all data requests regarding this Answer be sent to the following:

By email (preferred): datarequest@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232

Informal questions may be directed to Natasha Siores, State Regulatory Affairs Manager, at 503.813.6583 or natasha.siores@pacificorp.com.

II. ANSWERS

PacifiCorp admits, denies, alleges, and affirmatively defends as follows. Cypress’s complaint was initially filed as a request for a declaratory ruling and therefore is not in a traditional complaint format (i.e., numbered paragraphs). To avoid confusion, each allegation in the complaint is quoted in the left column below, and PacifiCorp’s answer to each allegation is provided in the right column.

Allegation	Answer
<p>Pursuant to ORS § 756.450 and OAR§ 860 001-0430, Cypress Creek Renewables, LLC (the “Petitioner”) requests that the Oregon Public Utility Commission (the “Commission”) issue a declaratory ruling confirming the Commission's determination and directive in Order No. 11-505 that “[r]enewable QFs willing to sell their output and cede their RECs to the utility allow the utility to avoid building (or buying) renewable generation to meet their RPS requirements [and these] QFs should be offered an avoided cost stream that reflects the costs that utility will avoid.” Docket No. UM 1396 (Phase II), Order No. 11-505 at 9 (Dec. 13, 2011) (“Order No. 11-505”).</p>	<p>This sentence is a request to the Commission and not an allegation. It therefore does not require an answer.</p>
<p>Petitioner has been engaged with [PacifiCorp] since April 2016 in an attempt to negotiate three power purchase agreements (“PPAs”) for Petitioner’s solar photovoltaic power projects (the “Projects”), all of which are qualifying facilities (“QFs”) under the Public Utility Regulatory Policies Act (“PURPA”) and the Federal Energy Regulatory Commission's (“FERC”) implementing regulations.</p>	<p>PacifiCorp admits that Cypress is negotiating PPAs with PacifiCorp for at least three solar photovoltaic projects located in Oregon.</p> <p>PacifiCorp does not have sufficient information to admit or deny whether these projects are “qualifying facilities” under the Public Utility Regulatory Policies Act (PURPA) and the Federal Energy Regulatory</p>

	Commission’s (FERC) implementing regulations.
Petitioner and PacifiCorp have been unable to conclude these negotiations, however, because they have not been able to come to an understanding as to the “avoided cost stream that reflects the costs that [PacifiCorp] will avoid.” <i>Id.</i>	PacifiCorp admits that the parties have been unable to agree on the appropriate avoided cost price stream.
The Projects are all 40 MWs and thus do not qualify for the “standard avoided cost rates” under PacifiCorp’s Schedule 37, which is limited to QFs no larger than 3 MWs.	This sentence contains legal conclusions, and therefore no answer is required.
Petitioner has thus sought PPAs under Schedule 38, which does not provide rates but instead provides a process by which PacifiCorp provides “indicative pricing,” which is “not final and binding,” with the understanding that “[p]rices and other terms and conditions are only final and binding to the extent contained in a power purchase agreement executed by both parties.” <i>See</i> Section B.2 of PacifiCorp’s current Schedule 38; <i>see also</i> Section B.2 of PacifiCorp’s proposed Non-Standard Avoided Costs Rates, filed in Docket No. UM 1610 (July 12, 2016).	<p>PacifiCorp admits that indicative pricing is not final or binding.</p> <p>PacifiCorp admits that prices and other terms and conditions are only final and binding to the extent contained in a PPA executed by both parties.</p> <p>PacifiCorp denies all other allegations in this sentence.</p>
Consistent with Order No. 11-505, Petitioner has requested PPAs offering renewable indicative pricing, inclusive of the Renewable Energy Certificates (also known as Renewable Energy Credits and Green Tags, collectively, “RECs”) that Petitioner is willing to sell to PacifiCorp and thus reflective of the full cost that PacifiCorp avoids in purchasing renewable energy from Petitioner’s QFs.	<p>PacifiCorp admits that Cypress has requested PPAs offering Schedule 38 fixed avoided cost prices for at least three solar voltaic projects.</p> <p>PacifiCorp denies the remaining allegations in this sentence.</p>
Petitioner understands that, going forward, PacifiCorp does not intend to refer to Schedule 37 or Schedule 38, but instead to documents reflecting its Standard Avoided Cost Rates and Non-Standard Avoided Cost Rates, respectively. For convenience, this petition uses the historical Schedule 37 and	Admitted.

Schedule 38 nomenclature to refer to Standard Avoided Cost Rates and Non-Standard Avoided Cost Rates, respectively. ¹	
Petitioner and PacifiCorp have been unable to come to terms as to whether PacifiCorp is required to offer such renewable pricing under Schedule 38.	Admitted.
Specifically, PacifiCorp has stated to Petitioner that PacifiCorp is not certain that the Commission’s regulations and orders require it to provide such pricing.	PacifiCorp admits that the Commission’s rules and orders do not obligate PacifiCorp to offer non-standard avoided cost prices based on the standard renewable avoided cost price stream. PacifiCorp denies the remaining allegations.
Accordingly, Petitioner is respectfully requesting that the Commission give PacifiCorp the required regulatory certainty.	This sentence is a request to the Commission and not an allegation. It therefore does not require an answer.
“On petition of any interested person, the Public Utility Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission.” ORS § 756.450	This sentence cites to a statute, which speaks for itself.
As discussed in detail below, Petitioner is an “interest person” and the ruling requested herein goes directly to Order No. 11-505, which is enforceable by the Commission.	This sentence contains legal conclusions, and therefore no answer is required.
In accordance with OAR§ 860-001-0430(1), the balance of this Petition sets forth: (a) The rule or statute that may apply to the person, property or facts; (b) A detailed statement of the relevant or assumed facts, including sufficient facts to show petitioner's interest; (c) All propositions of law or arguments asserted by petitioner; (d) The questions presented;	This paragraph cites administrative rules, which speak for themselves.

¹ Cypress Complaint, n. 1.

<p>(e) The specific relief requested; and</p> <p>(f) The name and contact information, including telephone number, physical address, and electronic mail address of petitioner and of any other person known by petitioner to have legal rights, duties, or privileges that will be affected by the request.</p>	
<p>As noted above, this petition requests clarification as to the application of the Commission’s directive in Order No. 11-505 that renewable QFs “should be offered an avoided cost stream that reflects the costs that [the] utility will avoid.” Order No. 11-505 at 9.</p>	<p>This sentence is a request to the Commission and not an allegation. It therefore does not require an answer.</p>
<p>Petitioner’s interest in the relief requested herein is clear.</p>	<p>Admitted.</p>
<p>Petitioner is a developer of solar QFs throughout the United States, including in Oregon.</p>	<p>Admitted.</p>
<p>Petitioner has executed six Schedule 37 contracts with PacifiCorp.</p>	<p>Admitted.</p>
<p>Petitioner has requested three Schedule 38 contracts from PacifiCorp for three of its Projects currently in development, and has further specifically requested renewable Schedule 38 rates for such contracts, based on the Commission's directive in Order No. 11-505.</p>	<p>PacifiCorp admits that Cypress has requested non-standard PPAs for at least three solar photovoltaic projects in Oregon. PacifiCorp denies the remaining allegations.</p>
<p>The relevant facts are equally straight-forward.</p>	<p>Denied.</p>
<p>On April 26, 2016, Petitioner requested via email indicative pricing under Schedule 38 for three of its Projects currently in development, and provided all information required by Schedule 38.</p>	<p>Denied.</p>
<p>Petitioner expressly (1) requested indicative pricing for renewable QFs and (2) referred to Order No. 11-505 as the basis for this request.</p>	<p>PacifiCorp admits that Cypress has requested indicative pricing under Schedule 38 for at least three solar voltaic projects. PacifiCorp denies the remaining allegations.</p>

<p>PacifiCorp responded via email that PacifiCorp is unsure whether it is required to provide indicative pricing for renewable QFs under Schedule 38.</p>	<p>PacifiCorp admits that the Commission’s rules and orders do not obligate PacifiCorp to offer non-standard avoided cost prices based on the standard renewable avoided cost price stream. PacifiCorp denies the remaining allegations.</p>
<p>PacifiCorp based its uncertainty on three assertions.</p>	<p>PacifiCorp admits that there are multiple reasons why it is not obligated to offer non-standard avoided cost prices based on the standard renewable avoided cost price stream. PacifiCorp denies the remaining allegations.</p>
<p>The first was that any request for Schedule 38 contracts was (at the time, i.e., prior to Order No. 16-174, discussed in more detail below) based solely on the pricing methodology provided in Order No. 07-360.</p>	<p>PacifiCorp admits that, at the time Cypress requested indicative pricing for at least three solar voltaic projects, Order No. 07-360 was the controlling precedent concerning the calculation of non-standard avoided cost prices. PacifiCorp denies the remaining allegations.</p>
<p>The second was that PacifiCorp was waiting for approval of a new calculation methodology in Docket UM 1610.</p>	<p>PacifiCorp admits that one of the issues before the Commission in Phase II of UM 1610 was the methodology for calculating non-standard avoided cost prices. PacifiCorp denies the remaining allegations.</p>
<p>The third was PacifiCorp’s view that Commission staff testimony in Docket UM 1610 made it seem that PacifiCorp might not be required to offer renewable Schedule 38 rates.</p>	<p>PacifiCorp admits that Commission staff provided testimony in Phase II of UM 1610 stating that: “Staff interprets Order No. 07-360 to require that Standard Non-Renewable Avoided Cost prices are the starting point for [Schedule 38 pricing] negotiations regardless of whether the negotiating QF is a renewable or non-</p>

	resource.” PacifiCorp denies the remaining allegations in this sentence.
<p>PacifiCorp referred Petitioner to the Staff Opening Testimony of Brittany Andrus in Docket UM 1610 (Phase II), filed May 22, 2015. In response to the question “Are PGE and PacifiCorp required to use Standard Renewable Avoided Cost prices as the starting point when the QF seeking a non-standard contract is a renewable QF?”, Senior Utility Analyst Brittany Andrus testified that:</p> <p style="padding-left: 40px;">Staff does not think so. The Commission issued its guidelines for negotiating non-standard contracts prior to their decision to require PGE and PacifiCorp to offer Standard Renewable Avoided Cost prices. The Commission's order requiring Standard Renewable Avoided Cost prices does not specify that PacifiCorp and PGE are to use these renewable prices as the starting point for negotiations with renewable QFs seeking non-standard contracts. In the absence of such a requirement, Staff interprets Order No. 07-360 to require that Standard Non-Renewable Avoided Cost prices are the starting point for negotiations regardless of whether the negotiating QF is a renewable or non- resource.</p> <p>Staff/500, Andrus/32-33.²</p>	<p>PacifiCorp admits that it pointed Cypress to Staff’s testimony in Phase II of docket UM 1610. The remainder of this paragraph references Commission staff testimony from UM 1610, which speaks for itself.</p>
<p>Petitioner has informed PacifiCorp that it intends to file this Petition for Declaratory Ruling. PacifiCorp did not object.</p>	<p>Admitted.</p>
<p>The Petitioner requests that the Commission issue a declaratory ruling confirming its directive in Order No. 11-505 that “[r]enewable QFs willing to sell their output and cede their RECs to the utility allow the utility to avoid building (or buying)</p>	<p>This sentence is a request to the Commission and not an allegation. It therefore does not require an answer.</p>

² Cypress Complaint, Footnote 2.

<p>renewable generation to meet their RPS requirements [and these] QFs should be offered an avoided cost stream that reflects the costs that utility will avoid.” Order No. 11-505 at 9.</p>	
<p>Such a ruling would fit squarely within the Commission’s determination in Order No. 11-505 that it “has the authority to adopt a separate avoided cost rate for renewable resources” and that “[b]ecause ORS Chapter 469A requires that electric utilities meet a renewable portfolio standard through the acquisition of [RECs] associated with qualifying renewable generation resources, a properly designed renewable energy avoided cost rate for renewable resources would comply with PURP A.” <i>Id.</i> at 4.</p>	<p>Denied.</p>
<p>The Commission went on to exercise this avoided cost rate design authority and “agree[d] with the parties [in Docket No. UM 1396 (Phase II)] that a separate avoided cost stream for renewable resources should be adopted for PGE and Pacific Power, the two Oregon utilities currently subject to the RPS.” <i>Id.</i></p>	<p>This sentence quotes a Commission order, which speaks for itself.</p>
<p>The Commission specifically grounded this authority in its determination that “[a]llowing a renewable QF to choose between the two avoided cost streams is consistent with FERC’s ruling that clarified the right of the states to determine the avoided cost associated with utility purchases of energy ‘from generators with certain characteristics.’” <i>Id.</i> at 9 (quoting <i>California Public Utilities Commission</i>, 133 FERC ~ 61,059 (October 21, 2010) at 13-14;3 <i>see also</i> Order No. 11-505 at 4 and footnote 2).</p>	<p>This sentence quotes a Commission order, which speaks for itself.</p>
<p>The balance of the sentence cited by the Commission in Order No. 11-505 is further instructive in the instant matter addressed by this petition: “Stated more generally, <i>SoCal Edison</i> supports the proposition that, where a state requires a utility to procure a certain percentage of energy from generators with</p>	<p>The first sentence of this paragraph quotes a Commission order, which speaks for itself. The second sentence (after the citation) is a</p>

<p>certain characteristics, <u>generators with those characteristics constitute the sources that are relevant to the determination of the utility’s avoided cost</u> for that procurement requirement.” <i>California Public Utilities Commission</i>, 133 FERC ~ 61,059 (October 21, 2010) at 13-14 (emphasis added). In the current context, the relevant generators are renewable generators and the relevant avoided costs are those that included avoided renewable energy costs.³</p>	<p>legal conclusion that does not require an answer.</p>
<p>Indeed, offering the renewable cost stream is mandated by PURPA in this context.</p>	<p>Denied.</p>
<p>In Order No. 11-505, the Commission required that a “renewable resource QF will keep all associated [RECs] during periods of renewable resource sufficiency, but will transfer those RECs to the purchasing utility during periods of renewable resource deficiency.” <i>Id.</i> at I.</p>	<p>This sentence quotes a Commission order, which speaks for itself.</p>
<p>The Commission reemphasized this arrangement only a few months ago: “In Order No. 11-505, we determined that a utility, once it becomes renewable resource deficient, receives a renewable QF’s RECs for the remainder of the standard contract. Thus, Order No. 11-505 ties REC ownership to utilities sufficiency or deficiency position.” Docket No. UM 1610, Order No. 16- 174 at 5 (May 13, 2016) (“Order No. 16-174”).</p>	<p>This sentences quotes a Commission order, which speaks for itself.</p>
<p>Renewable QFs transferring their RECs to a utility during periods of resource deficiency must be paid for them; only a renewable-specific avoided cost stream accomplishes this.</p>	<p>Denied.</p>
<p>Just last month, [FERC] again underscored the renewable-specific payment requirement in relation to a mandatory REC transfer obligation:</p> <p>[A] state regulatory authority may not assign ownership of RECs to</p>	<p>This sentence quotes a FERC order, which speaks for itself.</p>

³ Emphasis in original.

<p>utilities based on a logic that the avoided cost rates in PURP A contracts already compensate QFs for RECs in addition to compensating QFs for energy and capacity, because the avoided cost rates are, in fact, compensation just for energy and capacity.</p> <p><i>Windham Solar LLC and Allco Finance Limited</i>, 156 FERC ¶ 61,042 at 3 (July 21, 2016).</p>	
<p>Reconciling the Commission’s requirement that a renewable resource deficient utility “receives a renewable QF’s RECs for the remainder of the standard contract” with FERC’s determination that PURPA requires such renewable QFs be paid a rate that is inclusive of the value of the transferred RECs leads to the clear requirement of a renewable resource-specific avoided cost stream.</p>	<p>This sentence contains legal conclusions, and therefore no answer is required.</p>
<p>PacifiCorp’s first stated reason not to offer renewable Schedule 38 rates is that Order No. 07-360 should govern.</p>	<p>PacifiCorp admits that it stated that Order No. 07-360 governs this dispute.</p>
<p>This position ignores, however, that Order No. 11-505 is (1) the more recent statement of the Commission’s policy on the pricing to be offered to renewable QFs and (2) clearly requires that renewable QFs be offered a renewable avoided cost pricing stream.</p>	<p>This sentence contains legal conclusions, and therefore no answer is required.</p>
<p>That Order No. 11-505 governs PacifiCorp’s obligation here is clear from reading the more-recent still Order No.16-174.</p>	<p>This sentence contains a legal conclusion, and therefore no answer is required.</p>
<p>The Commission undertook in Order No. 16-174 to “consider proposals to revise the rates, terms, and conditions for Qualifying Facility (QF) standard and non-standard contracts in Oregon.” Order No. 16-174 at 1 (emphasis added).</p>	<p>This sentence quotes a Commission order, which speaks for itself.</p>
<p>The Commission specifically reemphasized its determinations in Order No. 11-505 as part of Order No. 16-174. <i>See id.</i> at 5.</p>	<p>This sentence references a Commission order, which speaks for itself.</p>

<p>Nothing in Order No. 16-174 limited these determinations to apply only to Schedule 37 contracts.</p>	<p>This sentence contains a legal conclusion, and therefore no answer is required.</p>
<p>In the wake of Order No. 16-174, PacifiCorp’s second statement that it is waiting for clarification it expected in that order is likewise unavailing.</p>	<p>Denied.</p>
<p>Nothing in Order No. 16-174 (or any other order since Order No. 11-505) calls into question the Commission’s clear instruction that renewable QFs, including the Projects, “should be offered an avoided cost stream that reflects the costs that [the] utility will avoid,” Order No. 11-505 at 9, and that “a separate avoided cost stream for renewable resources should be adopted for PGE and Pacific Power.” <i>Id.</i> at 4.</p>	<p>This sentences contains legal conclusions, and therefore no answer is required.</p>
<p>Finally, PacifiCorp’s reliance on Staff testimony in Docket UM 1610 is misplaced.</p>	<p>Denied.</p>
<p>Testimony provides Staffs analysis of an issue; it is not controlling on the Commission or on any party to a Commission docket.</p>	<p>Denied.</p>
<p>In contrast, the Commission’s Order No. 11-505 clearly is controlling, speaks directly to the issue raised in this petition, and requires that PacifiCorp offer Petitioner the renewable avoided cost pricing it has requested.</p>	<p>Denied.</p>
<p>Petitioner thus asks that the Commission apply its directives from Order No. 11-505 and issue a declaratory ruling that all renewable QFs are required to be offered an avoided cost rate stream that reflects renewable attributes in addition to energy and capacity.</p>	<p>This sentence is a request to the Commission and not an allegation. It therefore does not require an answer.</p>
<p>Petitioner requests that the declaratory ruling specifically include the Projects, although it should not be limited to them, as the issue is not limited to a lack of understanding between Petitioner and PacifiCorp but instead goes to proper implementation of the Commission’s orders.</p>	<p>This sentence is a request to the Commission and not an allegation. It therefore does not require an answer.</p>

<p>Does Order No. 11-505 require that renewable QFs, including but not limited to the Projects, be offered an avoided cost stream that reflects renewable attributes in addition to energy and capacity?</p>	<p>This sentence is a statement of an issue to be addressed by the Commission, not an allegation, and therefore does not require an answer.</p>
<p>Petitioner requests that the Commission confirm its directive in Order No. 11-505 that “Renewable QFs willing to sell their output and cede their RECs to the utility allow the utility to avoid building (or buying) renewable generation to meet their RPS requirements [and these] QFs should be offered an avoided cost stream that reflects the costs that utility will avoid,” Order 11-505 at 9, and require that PacifiCorp offer renewable QFs, including but not limited to the Projects, an avoided cost stream that reflects renewable attributes in addition to energy and capacity.</p>	<p>This sentence is a request to the Commission and not an allegation. It therefore does not require an answer. .</p>
<p>For the foregoing reasons, Petitioner respectfully requests that the Commission issue a declaratory ruling confirming its directive in Order No. 11-505 that “QFs should be offered an avoided cost stream that reflects the costs that utility will avoid.”</p>	<p>This sentence is a request to the Commission and not an allegation. It therefore does not require an answer.</p>
<p>Specifically, Petitioner respectfully requests that the Commission’s ruling expressly confirm that the PPAs that PacifiCorp is required to offer to purchase the output from the Projects (including their RECs) contain a renewable avoided cost-based pricing stream, and that PacifiCorp should offer such renewable avoided cost-based pricing to all similarly situated QFs.</p>	<p>This sentence is a request to the Commission and not an allegation. It therefore does not require an answer.</p>

III. AFFIRMATIVE DEFENSES

PacifiCorp further answers and alleges as follows:

1. Cypress failed to state a claim upon which relief may be granted.

2. The non-standard avoided cost methodology the Commission adopted for PacifiCorp (i.e. the partial displacement differential revenue requirement method) in Order No. 16-174 renders Cypress' complaint moot.

3. Cypress failed to establish a legally enforceable obligation with respect to the solar photovoltaic projects for which it seeks Schedule 38 pricing.

Discovery and investigations are continuing, and PacifiCorp reserves the right to assert additional affirmative defenses, as well as necessary counterclaims and/or third-party claims.

Having fully answered Cypress' complaint, PacifiCorp respectfully asks that the Commission:

- A. Dismiss Cypress' complaint;
- B. Deny all relief requested by Cypress in its complaint; and
- C. Grant PacifiCorp such other relief as the Commission deems just and reasonable.

Dated this 21st day of October, 2016



Dustin T. Till
Senior Counsel
PacifiCorp
Counsel for PacifiCorp