

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 15, 2014

REGULAR X CONSENT _____ EFFECTIVE DATE _____ Upon Commission Approval

DATE: May 7, 2014

TO: Public Utility Commission

FROM: Brittany Andrus *BA*
F for BA *ME* *AA*

THROUGH: Jason Eisdorfer, Maury Galbraith, and Aster Adams

SUBJECT: RENEWABLE ENERGY COALITION: (Docket No. DR 48) Petition for Declaratory Ruling.

STAFF RECOMMENDATION:

Staff recommends the Commission deny the Renewable Energy Coalition’s Petition for Declaratory Ruling (Petition). Further, Staff recommends that the Commission open an investigation into whether PacifiCorp’s interpretation of its standard contract for non-intermittent Qualifying Facilities under 10 MW complies with current Commission orders, particularly Order No. 06-538.

DISCUSSION:

Issue & Positions of the Parties

The Renewable Energy Coalition (REC or Coalition) seeks a declaratory ruling that the terms of PacifiCorp’s standard form contract for non-intermittent Qualifying Facilities (QFs) under 10 MW do not allow PacifiCorp to terminate a QF contract for delayed commercial operation unless PacifiCorp is actually in a resource deficient position during the period that the Commercial Operation Date (COD) is delayed.¹

PacifiCorp opposes the Petition, asserting that the declaratory ruling process is not the appropriate method to resolve the issue raised by the Coalition because the Coalition does not ask the Commission to apply a statute or rule to a set of clearly identified facts as required by ORS 756.450 but instead “seeks a Commission decision on a policy issue that is best decided as part of a general investigation.” The Company also

¹ The contract is the “Power Purchase Agreement between, [a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and not an Intermittent Resource] and PacifiCorp,” attached to REC’s petition as Exhibit A.

asserts that the Petition should be denied because the Coalition seeks a ruling that is broadly applicable rather than a decision binding between the Commission and REC.²

Criteria for Declaratory Ruling

Staff counsel advises that ORS 756.450 authorizes the Commission to 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. Under OAR 860-001-0430, the Commission will first consider at a public meeting whether to substantively consider the declaratory ruling. If the Commission decides to substantively consider the petition, the matter will be referred to the Administrative Hearings Division for further proceedings. If the Commission chooses to not substantively consider the petition, it will deny it with no further proceedings.

Staff Analysis

The Coalition's petition does not ask for a declaratory ruling concerning the application of a statute or rule to a set of identified facts as required by ORS 756.450. Instead, the Petition asks the Commission to issue a ruling concerning the application of PacifiCorp's standard form contract for non-intermittent QF's under 10 MW to a set of particular factual circumstances. Accordingly, the Petition does not appear to meet the statutory criteria specifying when the Commission may issue a declaratory ruling. For this reason, Staff recommends that the Commission decline to substantively consider REC's Petition.

However, the Coalition's Petition identifies the following issue which Staff recommends be resolved by the Commission: Whether PacifiCorp's interpretation of the termination provision in its standard contract violates Commission Order No. 06-538. That Order addressed the issue of a utility's ability to terminate the standard contract for default due to failure to meet the scheduled COD date.³ The investigation would concern

² PacifiCorp Response 4-5.

³ *Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Order No. 06-538 at 26-27,

In Order No. 05-584, we identified a delay by a QF coming on line as an event of default, and recognized that the utility would potentially need to replace the energy that the QF was under contract to deliver, at market prices exceeding the contract price. We observed, however, that if the utility is in a resource sufficient position, it may be that the utility could avoid replacing the energy *at any cost*. In other words, we deemed the risk to utilities and their ratepayers of operational delay by a QF when the utility was resource sufficient to be reduced. Consequently, we did not find a need to require the QF to provide *additional* security against default due to operational delay. Nevertheless, this finding did not imply the conclusion by Staff that a QF's operational delay when a utility is resource sufficient would cause *no* harm to a utility and its ratepayers.

PacifiCorp's interpretation of the Order in a manner that would allow it to terminate the standard contract if it anticipated that it would be resource deficient at the time of the scheduled COD, even though it is actually resource sufficient at the time of default.

Finally, PacifiCorp asserts that the question of when a utility should be allowed to terminate a standard contract for failure to meet the scheduled COD is a policy issue that should be resolved in the Commission's ongoing investigation into PURPA implementation issues in Docket No. UM 1610.⁴ In response, Staff notes that in Docket No. UM 1610, Phase II, the Commission will be asked to provide guidance on when, *on a going-forward basis*, a standard contract should be subject to termination for failure to meet the scheduled COD. However, the question presented in the Coalition's petition at issue here is whether PacifiCorp's interpretation of the current form of the standard contract complies with the policy set forth in *current* Commission orders. This latter question is not at issue in the UM 1610 proceeding.

Staff Recommendation

Deny Renewable Energy Coalition's Petition for Declaratory Ruling. Open an investigation into whether PacifiCorp's interpretation of its standard contract for non-intermittent QF's under 10 MW complies with current Commission orders.

DR 48 REC Petition for Declaratory Ruling.DOCX

Although energy may not be needed on a system basis, a utility may still be damaged. For example, in anticipation of receiving QF power, a utility may have already entered into a market arrangement to sell the power and will have to buy energy on the market to fulfill that obligation, or a utility may lose an opportunity to sell the power on the market at a price above the contract price. **Consequently, we recognize that damages may be incurred when a QF's operation is delayed, even if a utility is resource sufficient. However, we would expect that a resource sufficient utility would be able to minimize the damages on a going forward basis. Consequently, we determine that a QF's operational delay pursuant to a contract with a resource sufficient utility should result in default, but not in termination.** (Italics in original, bold added.)

⁴ PacifiCorp Response at 4-5.