BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1729

In the Matter of PACIFICORP, dba PACIFIC POWER, Application to Update Schedule 37 Qualifying Facility Information	))))))))	COMMENTS OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION AND THE RENEWABLE ENERGY COALITION

I. INTRODUCTION

The Community Renewable Energy Association ("CREA") and the Renewable Energy Coalition ("Coalition") ("Joint QF Parties") file these comments regarding PacifiCorp's (or the "Company") application to update its Schedule 37 qualifying facility ("QF") information and PacifiCorp's motion for emergency interim relief. As explained in detail herein, the Joint QF Parties request that the Oregon Public Utility Commission ("OPUC" or "Commission") take the following actions:

- Require PacifiCorp to include the costs of its Wyoming transmission line with the costs of the avoidable renewable resource in Wyoming, which should result in a significant increase in PacifiCorp's renewable avoided costs;
- Reject PacifiCorp's proposal to reverse this Commission's policies that provide eligible QFs with the choice between selling under non-renewable or renewable avoided cost rates; and,
- Require the corrected rates go into effect promptly.

That outcome is supported by Commission policies PacifiCorp has evaded for too long. Prompt action is needed to avoid unnecessary litigation and allow Oregon's small QFs the option to sell to PacifiCorp. Indeed, the Joint QF Parties have been arguing for years that the next major Wyoming wind farm acquired by PacifiCorp would include significant transmission costs that must be included in the avoided cost rates, and those longstanding arguments have now proven true. To date, Oregon QFs have been deprived of the full avoided costs of this Wyoming wind farm, and therefore the Commission should ensure that the renewable rates, *including* transmission costs, remain in effect long enough for Oregon QFs to enter into contracts with those rates.

II. COMMENTS

A. Regulatory Background and Legal Standards

Congress enacted the Public Utility Regulatory Policies Act of 1978 ("PURPA") to address the energy crises of the 1970s, and Section 210 of PURPA remains the only federal law that directly mandates the purchase of renewable and cogenerated electric energy by monopoly electric utilities. In effect, PURPA is the nation's bare minimum renewable energy standard.

Although Oregon has its own renewable portfolio standard ("RPS"), PURPA still has significant importance in Oregon. Oregon's regulated electric utilities generally procure large-scale renewable energy facilities of at least 100 MW in capacity, but Oregon's RPS law declares that "community-based renewable energy projects . . . are an essential element of this state's energy future." ORS 469A.210(1). It further mandates that "by the year 2025, at least eight percent of the aggregate electrical capacity of all electric companies that make sales of electricity to 25,000 or more retail electricity consumers in this state must be composed of electricity generated by . . . (a) [s]mall-scale renewable energy projects with a generating capacity of 20 megawatts or less that generate electricity utilizing" an RPS-eligible renewable resource, "or (b) [f]acilities that generate electricity using biomass that also generate thermal energy for a secondary purpose." ORS 469A.210(2). Yet PURPA is the only policy the Commission implements that might result in eight percent of electric capacity being supplied by such community-based renewable facilities by 2025. For such small facilities, PURPA is as important today as it was in 1978.

In enacting PURPA, Congress found traditional electric utilities, as lone buyers of electric energy in a market with many potential producers, "were reluctant to purchase power from . . . nontraditional facilities." *FERC v. Mississippi*, 456 US 742, 750 (1982). Indeed, as this Commission has itself found, investor-owned electric utilities are reluctant to purchase any long-term generation that cannot be placed in the utility rate base to earn a return for utility shareholders. Thus, to overcome this reluctance, PURPA directed the Federal Energy Regulatory Commission ("FERC") to promulgate regulations "to *encourage* cogeneration and small power production" including regulations that "require electric utilities to offer to . . . purchase electric energy from such facilities[,]" which are known as "qualifying facilities" or "QFs." 16 USC § 824a-3(a) (emph. added).

PURPA requires each state regulatory authority to implement these FERC regulations for each electric utility for which it has ratemaking authority. 16 USC § 824a-3(f). Thus, if a state chooses to regulate certain electric utilities, its state regulatory authority must implement FERC's PURPA regulations for such utilities. *Mississippi*, 456

US at 751, 759-61. Oregon law requires the Commission to implement these requirements for Oregon's regulated electric utilities. ORS 758.505 *et seq.*

At issue here is FERC's regulation mandating that utilities pay QFs a price set at the utility's "full avoided cost." *Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 US 402, 406, 413-17 (1983); *see also* 18 CFR §§ 292.101(b)(6), 292.304(b). Avoided costs are "the incremental cost to an electric utility of electric energy or energy and capacity that the utility would generate itself or purchase from another source but for the purchase from a qualifying facility." ORS 758.505(1). Consistent with federal law, Oregon law mandates that the "price for such purchase shall not be less than the utility's avoided cost." ORS 758.525(2). Oregon law also requires the Commission to follow state policies, which are to increase the marketability of QFs and to create a settled and uniform institutional climate for Oregon QFs. ORS 758.515(3).

The Commission requires utilities to offer all QFs an avoided cost rate that is calculated based on the costs of the next major resource (in excess of 100 MW) planned in the utility's acknowledged Integrated Resource Plan ("IRP"), which is typically a gas-fired plant. *Re Investigation Relating to Elec. Util. Purchases from QFs*, Docket No. UM 1129, Order No. 05-584 at 26-29 (May 13, 2005). During periods of resource sufficiency prior to the planned acquisition of the major resource, the utility pays the QF the forecasted prices for short-term market electricity sales. *Id.* Additionally, for QFs that are qualified as RPS-eligible facilities under Oregon law, the Commission requires the additional option for such QFs to sell both their electrical output and their renewable energy credits ("RECs") to Portland General Electric Company ("PGE") or PacifiCorp in exchange for renewable avoided cost rates calculated based on the costs of the next major renewable resource the utility will acquire. *In the Matter of Pub. Util. Comm'n of Or., Investigation Into Resource Sufficiency Pursuant to Order No. 06-538*, Docket No. UM 1396, Order No. 11-505, at 1-2, 4-5 (Dec. 13, 2011).

The starting place for the review of avoided cost rates is the purchasing utility's acknowledged IRP. The utility's avoided cost rates should include "inputs and assumptions taken from IRPs that are subject to stakeholder review," including gas price forecasts, capital costs, wind capacity factors, and the resource sufficiency-deficiency demarcation. *See Re Commission Investigation Into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014). The Commission therefore approves a major avoided cost update after acknowledgement of each utility's IRP, which typically occurs every two years. *Id.* at 23-25.

However, the IRP is not itself a litigated proceeding where the Commission resolves disputes over the critical inputs to the avoided costs. Thus, where, as here, the utility's filing relies on changes made in a recently acknowledged IRP or IRP Update, Staff and QFs may challenge the utility's proposed use of (or failure to properly use) IRP data in calculating its avoided cost rates. *See Re Investigation Relating to Elec. Util. Purchases from QFs*, Order No. 05-584 at 36-37; *Re Investigation Relating to Elec. Util. Purchases from QFs*, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006). This right to challenge the utility's proposed use of the IRP to set rates makes good sense – otherwise, the utility would unilaterally set the rates it must pay its competitor QFs.

In any rate filing, the utility has the burden of proof to demonstrate that the factual inputs and assumptions for its avoided cost rates are just and reasonable. The utility is charged with the statutory responsibility to "prepare, publish and file" its avoided cost prices, which "shall be reviewed and approved by the commission." ORS 758.525(1). The Commission's administrative rules specifically state that the utility "has the burden of supporting and justifying" the underlying avoided cost data. OAR 860-029-0080(1)&(4). Placing the burden of proof on the party that developed the information is consistent with administrative legal principles, which almost universally place the burden of proof on the movant or proponent. ORS 757.210; 5 USC § 556(d); 16 USC § 824d(e).

Likewise, the Commission's rules specifically state that "[s]tandard rates for purchases shall be implemented . . . [i]n the same manner as rates are published for electricity sales . . . ." OAR 860-029-0040(4); *see also* OAR 860-029-0080(6) (stating proposed avoided cost rates "shall be subject to suspension and modification by the Commission."); *Re Investigation Relating to Elec. Util. Purchases from QFs*, Order No. 05-584 at 36-37 (stating same rule). Therefore, the Commission's rules require that interested parties have the opportunity to submit evidence responding to the reasonableness of the utility's proposed avoided cost rates.

B. PacifiCorp's Renewable Avoided Costs Must Include the Transmission Costs of PacifiCorp's Wyoming Wind Plant

PacifiCorp's post-IRP acknowledgement rate filing appropriately uses 2021 as the renewable deficiency date tied to the major Wyoming wind farm it is currently procuring, but PacifiCorp fails to include all of the costs of that Wyoming wind farm in its renewable avoided costs. As the Commission has required of PGE for years, PacifiCorp's avoided costs must include the transmission costs that would not be incurred but for the acquisition of the Wyoming wind farm.

Under avoided cost principles, the Commission must include avoided transmission costs in the avoided cost rates if those transmission costs would be incurred by the utility's avoidable generation. As noted above, FERC determined QFs are entitled to long-term contract rates set at the utilities' *full* avoided costs, not some lesser amount. *See Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, 45 Fed Reg 12,214, 12,222-12,223 (Feb. 25, 1980). The United States Supreme Court unanimously affirmed FERC's full avoided cost rule. *American Paper Institute*, 461 US at 413, 417-18. Thus, state utility commissions must set rates that are no less than the utility's full avoided costs. Where the utility's next planned resource cannot be acquired without incurring transmission costs, those transmission costs must logically be included in any reasonable calculation of the utility's full avoided costs.

This principle is well established. FERC has itself confirmed that the purchasing utility's avoided transmission costs should be included in calculation of the avoided cost rates. *Calif. Pub. Util. Commn.*, 133 FERC ¶ 61,059, P 31 (2010) (stating that "if the CPUC bases the avoided cost 'adder' or 'bonus' on an actual determination of the expected costs of upgrades to the distribution or transmission system that the QFs will permit the purchasing utility to avoid, such an 'adder' or 'bonus' would constitute an actual avoided cost determination and would be consistent with PURPA and our regulations"). PGE has included transmission costs in its avoided cost rates for years. *See Re Commission Investigation Into QF Contracting and Pricing*, Order No. 14-058 at 17. PacifiCorp's own listed minimum filing requirements in this docket acknowledge that transmission costs should be included where tied to the avoidable generation because

PacifiCorp includes a specific line item for the transmission costs of the avoidable generation resource. *See PacifiCorp Compliance Filing*, at Minimum Filing Requirements Attachment (April 26, 2018) (including line stating "List the components of transmission costs used and their respective values" under the table titled "V. Renewable Rates Deficiency Period Resource").

In an analogous situation, the Idaho Public Utilities Commission imposed an avoided transmission expense as a component of PacifiCorp's avoided cost rates at a time when the avoided resource was a surrogate Wyoming coal plant that would rely upon costly transmission to reach loads in Idaho. *In re Investigation and Determination of Utility Specific Variables for the Setting of Avoided Cost Rates and the Establishment of Such Rates for PacifiCorp,* Idaho PUC Case No. PPL-E-89-3/UPL-E-89-5, Order No. 23358, 1990 Ida. PUC LEXIS 160 at **14-22 (Sept. 1, 1990). In that case, the transmission costs were included alongside the capital costs of the Wyoming coal plant in the avoided cost rates paid to QFs. *Id.*

The Commission has recognized the significance of this issue since it first adopted a renewable-based price, given PacifiCorp's long-standing efforts to develop wind farms in Wyoming. In Order No. 11-505, which adopted the renewable avoided costs, the Commission declined to adopt a universally applicable wind proxy on the basis that "[d]ifferences in capacity, capacity factors and transmission costs-due primarily to differences in locations-would not be captured in a proxy model, so that the proxy would not provide an accurate measure of a utility's true avoided cost." *In the Matter of Pub. Util. Comm'n of Or., Investigation Into Resource Sufficiency Pursuant to Order No. 06-538*, Order No. 11-505 at 5. Thus, the Commission adopted the policy of basing the renewable avoided cost on the "the next renewable resource in a utility's IRP" and explained the "avoided cost of the IRP resource will be based on the unique circumstances of each utility." *Id.* at 7.

In this case, that unique resource is a Wyoming wind farm and transmission line acknowledged in PacifiCorp's 2017 IRP. The Commission's orders direct PacifiCorp to calculate the rates based on the reasonable costs included with the resource, as acknowledged by the Commission in the IRP – requiring analysis of the Commission's order acknowledging PacifiCorp's next Wyoming wind plant and related transmission line in its IRP. *See id.*

The Commission's order acknowledging the 2017 IRP describes these action items as part of the "Energy Vision 2020." In addition to repowering existing wind facilities, the Energy Vision 2020 included "new wind resources, and the Aeolus to Bridger/Anticline transmission line." *In the Matter of PacifiCorp, dba Pacific Power, 2017 Integrated Resource Plan,* Docket No. LC 67, Order No. 18-138, at 6 (April 27, 2018). Action Item 1b was acquisition of up to 1,100 MW of wind resources in Wyoming, and Action Item 2a was the Aeolus to Bridger/Anticline transmission line.

These two action items – Action Items 1b and 2a – were directly tied in the IRP. The Commission order explains:

> The proposed wind resources will be acquired in conjunction with Action Item 2a, which describes a new 140-mile, 500 kilovolt (kV) transmission line and associated infrastructure running from the new Aeolus substation near Medicine Bow, Wyoming, to a new annex substation, Bridger/Anticline, which will be located near the existing Jim Bridger substation (Aeolus to Bridger/Anticline line).

Id. at 6-7. As the order further explains, "PacifiCorp states the transmission resource is necessary to relieve congestion and will enable the interconnection of the proposed wind resources into PacifiCorp's transmission system." *Id.* at 7.

The wind and transmission resources were proposed and acknowledged as a joint expenditure. The Commission explained, "PacifiCorp asserts that the proposed new wind resource net of PTC benefits, when combined with the transmission resource, are expected to provide economic benefits for PacifiCorp's customers, if both resources are operational by the end of 2020." *Id.* Based on PacifiCorp's representations, the Commission acknowledged the two action items for the wind and transmission acquisitions in the near term (Action Items 1b and 2a). *Id.* at 7-8. Although the acknowledgement had some conditions, PacifiCorp has proceeded with the request for proposals for up to 1,100 MW of Wyoming wind resources and relies on the Wyoming wind farm with an online date in 2020 in its rate proposal here.

In short, therefore, PacifiCorp cannot access the Wyoming wind resource without incurring substantial costs to also build transmission facilities to move the Wyoming wind resource to PacifiCorp loads. While PacifiCorp included the favorable elements of Wyoming wind, including the high capacity factor (assumed at 41 percent in PacifiCorp's filing), PacifiCorp inexplicably, and without any explanation, omitted the significant transmission costs from its proposed avoided cost rates. There is no rational basis on the record before the Commission to allow PacifiCorp to ignore the costs of the Aeolus to Bridger/Anticline transmission line as a part of the costs of the new Wyoming wind resource.

When the Joint QF Parties attempted to raise this issue in Phase 1 of Docket No. UM 1610, the Commission's reconsideration order indicated that inclusion of in-system transmission upgrades for an avoidable resource was not precluded by the Commission's orders. *Re Commission Investigation Into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 14-229 (June 20, 2014) (denying reconsideration because the issue was beyond the scope of prior order). In effect, the Commission deferred decision on the issue in the abstract until facts from a specific IRP Action Plan were presented to the Commission. However, the issue is now squarely before the Commission and of substantial and immediate importance to Oregon QFs.

For the reasons stated herein, the Commission should require PacifiCorp to include the costs of the Wyoming transmission line in the renewable avoided costs of the Wyoming wind farm.[1]

C. The Commission Should Reject PacifiCorp's Proposal to Relitigate the QF's Right to Choose to Sell Under Renewable or Non-Renewable Rates

The Commission should reject PacifiCorp's proposal to relitigate the renewable QFs' right to choose to sell under either the renewable rates or the non-renewable rates. PacifiCorp unsuccessfully made this same exact argument when the Commission first adopted the renewable avoided cost rates. Moreover, an avoided cost compliance filing is the wrong procedural mechanism to implement such a major policy change, especially on an emergency or interim basis.

[1] The Joint QF Parties have attempted to obtain a calculation of the renewable avoided cost rates inclusive of the transmission costs through discovery. However, even though PacifiCorp has requested immediate processing of its avoided cost compliance filing on an emergency basis, PacifiCorp has not yet provided expedited response to the data request for this information within its possession and control.

1. PacifiCorp's Proposal Has No Substantive Merit

The Commission has previously rejected PacifiCorp's argument, and it should do so again here. Just as it argues here, PacifiCorp argued in Docket No. UM 1396 that "a renewable QF should not be allowed to choose the standard avoided cost rate if it is higher than the renewable rate." *In the Matter of Pub. Util. Comm'n of Or., Investigation Into Resource Sufficiency Pursuant to Order No. 06-538*, Order No. 11-505 at 9. The Commission appropriately rejected this argument, explaining:

> Allowing 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." 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. These QFs should be offered an avoided cost stream that reflects the costs that utility will avoid.
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> We decline Pacific Power's proposal to allow the choice only when the non-renewable avoided cost rate is lower than the standard [renewable] avoided cost rate.

Id.

PacifiCorp identifies no changed circumstances from those assumed in Order No. 11-505 when the Commission previously rejected its argument. Instead, PacifiCorp appears to assert that the alleged change in circumstances is that the renewable avoided costs (as calculated by PacifiCorp without necessary transmission) are now lower than the non-renewable avoided costs. But that was the underlying premise of PacifiCorp's proposal – that renewable QFs must sell under the renewable avoided costs when the non-renewable avoided costs are higher than the renewable avoided costs. In any case, it is far from clear that the renewable rates would in fact be lower at this time if PacifiCorp properly included the avoidable transmission costs in the its renewable rates.

Additionally, FERC's order allowing for the Commission to implement a renewable avoided cost rate does not allow the Commission to offer that renewable rate as the *only* avoided cost rates. Instead, the premise of FERC's order was to offer certain QFs a *higher* avoided cost rate option. FERC explained that if a utility must comply with a state's renewable portfolio standard, the state may offer a *multi-tiered avoided cost rate program* that includes the option to elect a higher avoided cost rate stream to certain QFs that allow the utility to avoid the additional cost of compliance with state law. *Cal. Pub. Util. Comm'n*, 133 FERC ¶ 61,059, at PP 21-26 (Oct. 21, 2010). FERC has confirmed that the "'full avoided cost' need not be the lowest possible avoided cost and can properly take into account real limitations on 'alternate' sources of energy imposed by state law." *Id.*

The intent and plain terms of FERC's order provide certain QFs with an *additional* option to sell at a rate that might be more attractive than rates reflecting the cost of the utility's non-renewable plants. This additional option is important in circumstances where the avoided costs of conventional generation alone are inadequate to fully compensate renewable QFs for the costs they enable the utility to avoid. But this additional option should not become the *only* option. PacifiCorp improperly attempts to turn this policy on its head by depriving QFs of the traditional option to sell only their energy and capacity and to receive avoided costs based on the utility's "brown power" alternatives.

Moreover, PacifiCorp's proposal would also require the Commission to engage in a rulemaking to reverse its longstanding policy that the QF has the right to choose to retain ownership of its renewable energy attributes. The Commission's administrative rules currently provide: "Unless otherwise agreed to by separate contract, the owner of the renewable energy facility retains ownership of the non-energy attributes associated with electricity the facility generates and sells to an electric company pursuant to: . . . (b) An Oregon contract with the electric company entered into pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978 . . ." OAR 860-022-0075(2). PacifiCorp fails to explain how the Commission could implement its proposal without violating the administrative rules.

Indeed, PacifiCorp fails to explain how QFs that do not generate renewable energy credits would be entitled to any avoided cost rate contract under its proposal. QFs under PURPA include small power production facilities (utilizing renewable fuels) up to 80 MW and cogeneration facilities with no size limitations. 18 CFR §§ 292.204 to 292.205. PURPA's rules for small power production facilities broadly allow all types of renewable generation, with certain limited requirements for hydropower facilities. 18 CFR §§ 292.204, 292.205, 292.208. Oregon's RPS qualification criteria are not identical to PURPA's qualification criteria to be a QF. *See* ORS 469A.010 to 469A.025. Thus, many QFs – including all cogeneration QFs, as well as small power production QFs using biomass and many using hydropower – do not generate RECs under Oregon's RPS and are not qualified for PacifiCorp's renewable avoided cost rates. Although not at all clear, PacifiCorp appears to propose that these non-RPS QFs receive a renewable avoided cost rate without providing RPS-eligible power, or that these non-RPS QFs be disallowed from selling under PURPA to PacifiCorp. The first possibility makes no sense, and the second would repeal federal law.

In summary, therefore, the Commission should again reject PacifiCorp's ill-advised proposal to eliminate the standard avoided cost rates calculated based on the costs of the utility's next major non-renewable resource acquisition.

2. Commission Precedent Does Not Allow Policy Changes in a Compliance Filing for Avoided Costs

Even if PacifiCorp's proposal had any substantive merit (which it does not), this is not a proceeding to make major policy changes to the Commission's implementation of PURPA. Instead, as the Commission has determined in the past, an avoided cost rate update proceeding is a proceeding to implement prior policies.

For example, in 2009, natural gas prices dramatically dropped, which resulted in a significant avoided cost rate decrease. PacifiCorp's avoided cost compliance filing was consistent with the Commission's approved methodologies, but industrial customers, the Oregon Department of Energy, and renewable energy advocates challenged PacifiCorp's new rates and sought to revisit the manner in which the rates were set. The Commission rejected those efforts in Docket No. UM 1442.

The Commission explained that "avoided cost methodologies are examined in recurring generic investigations and periodic utility updates are reviewed for compliance with those methodologies." *In the Matter of Pub. Util. Comm'n of Or. Investigation to Determine if Pac. Power's Rate Revision Is Consistent with the Methodologies and Calculations Required by Order No. 05-584*, Docket No. UM 1442, Order No. 09-427 at 4 (Oct. 28, 2009). The process implements the Commission's "responsibility to provide incentives for QF development" because it provides "predictability in avoided cost pricing in order to allow a potential developer or investor to easily evaluate the economic feasibility of a project." *Id.* at 3. Re-litigating methodological issues in a utility-specific compliance filing "could potentially result in a lengthy, highly adversarial proceeding that would only cause uncertainty of QF rates." *Id.* at 4. The only difference in this case is that – as opposed to QF advocates' efforts to alter the methodology to increase rates in Docket No. UM 1442 – now PacifiCorp that wants to alter the methodology to *decrease* rates.

The methodology changes PacifiCorp is proposing here constitute wholesale, radical changes to the Commission's PURPA policies that could change the way avoided cost prices are calculated for the other regulated utilities. But in Docket No. UM 1442 the Commission said it wanted to "remind parties that other proceedings may be used, to the extent appropriate, to address proper valuation of a utility's avoided costs." *In the Matter of Pub. Util. Comm'n of Or. Investigation to Determine if Pac. Power's Rate Revision Is Consistent with the Methodologies and Calculations Required by Order No. 05-584*, Docket No. UM 1442, Order No. 09-506 at 4 (Dec. 28, 2009). At most, therefore, PacifiCorp's proposal might be considered in a future investigation after a properly filed application to initiate such a proceeding, but the proposal could not delay the avoided cost update required under the existing policies and methods.

After the Joint QF Parties attempted to challenge PacifiCorp's rate methodologies in a compliance filing last year, the Commission opened Docket No. UM 1794 and ultimately suggested that it might generically investigate the methodologies to set avoided cost prices. *See In the Matter of PacifiCorp dba Pac. Power Investigation into*

Schedule 37 - Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less, Docket No. UM 1794, Order No. 17-239 at 2-3 (July 7, 2017). However, the Commission closed that docket, after merely concluding that the docket raised "important questions worthy of examination in their own right and have caused us to review some policy gaps in how setting avoided costs is informed by our IRP and RFP processes for all utilities in Oregon subject to PURPA regulation." *Id.* Specifically, the order identified the issue of how to address the circumstance where QF parties allege the utility is actively acquiring a renewable resource outside of the IRP Action Plan while improperly failing to include that resource in its avoided cost rates. *Id.* But that issue need not be resolved to set the rates here because, unlike last year's rate filing, PacifiCorp's acknowledged IRP Action Plan specifically includes the near-term acquisition of the Wyoming wind farm. PacifiCorp itself includes that resource as the avoided resource in its own avoided cost rates, albeit without the necessary transmission costs.

Thus, the Commission's existing policies apply here without the need for additional investigation.

3. Immediate Relief is Not Warranted Because Harm Has Not Been Established

PacifiCorp's motion for immediate interim relief is misplaced. PacifiCorp has not presented a reasonable basis to provide immediate relief to change its avoided cost rate methodology. Nor has it even demonstrated that its renewable avoided cost rates should currently be lower than its non-renewable avoided cost rates, since it failed to include the avoided transmission costs in the renewable rates. Likewise, PacifiCorp has not yet even supplied correctly calculated rates with transmission costs in response to data requests that it do so. The Joint QF Parties expect that the correctly calculated rates will be substantially higher than PacifiCorp's proposed rates, thus mitigating or completely eliminating PacifiCorp's allegations of harm. Therefore, the Commission should first carefully consider PacifiCorp's avoided cost rate filing and require those renewable rates to go into effect before considering the misplaced proposal to eliminate any avoided cost pricing options. Granting relief immediately would put the proverbial horse before the cart.

PacifiCorp's request is, in effect, an untimely request for reconsideration of Order No. 11-505, which, as discussed above, already rejected the very same argument. The Commission may rescind, suspend or amend any of its orders after the time for reconsideration has passed, but the Commission has significant discretion in whether it will do so under ORS 756.568, a statutory section PacifiCorp fails to cite. The Commission has limited the use of ORS 756.568 to "unique circumstances." *See Re Lower Ridge Wind Farm LLC & High Plateau Wind Farm LLC, Request for Waiver of the Five-Mile Radius Requirement*, Docket No. UM 1596, Order No. 12-188 at 1 (May 23, 2012). In the case of requests for immediate relief from existing orders, the Commission has relied on Oregon's Administrative Procedures Act ("APA") standard as a guide. *In the Matter of PGE's Proposal to Restructure and Reprice its Services in Accordance with the Provisions of SB 1149*, Docket No. UE 115, Order No. 01-842 at 2 (Sept. 28, 2001). Under that standard, the petitioner must demonstrate irreparable harm *and* a colorable claim of error. *Id.* (citing ORS 183.482(3)(a)). The Commission has also rejected such interim relief where it would result in substantial public harm. *Id.* at 4. For the reasons already explained above, PacifiCorp has failed to demonstrate irreparable harm or any errors in the existing policies, and even if it had demonstrated both, its request for immediate relief would certainly cause public harm to QFs entitled to sell their energy and capacity to PacifiCorp at the avoided costs.

In cases where the Commission has granted interim relief, it has explained that this type of "relief should be narrow, targeted, and proportionate." *In the Matter of Idaho Power Company, Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination*, Docket No. UM 1725, Order No. 15-199 at 7 (June 23, 2015). The Commission granted interim relief to Idaho Power, for example, when it was facing an "unprecedented pace and volume" of new QF solar development by narrowly lowering the eligibility cap for avoided costs just for solar QFs. *Id.* The Commission granted similar interim relief to PacifiCorp finding "sufficient reason to provide a modest measure of relief pending our further analysis of market conditions and Commission QF policies." *In the Matter of PacifiCorp, dba Pacific Power, Application to Reduce the QF Contract Term and Lower the QF Standard Contract Eligibility Cap*, Docket No. 1734, Order No. 15-241 at 3 (Aug. 14, 2015).

More recently, the Commission provided PGE limited interim relief from large-scale solar QF development. But in doing so the Commission also denied PGE's broader request for immediate retroactive relief. *In the Matter of PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar QFs*, Docket No. UM 1854, Order No. 17-310 at 1 (Aug. 18, 2017). The Commission expressly noted that "to help ensure a settled and uniform institutional climate for QFs, QF developers should be provided with some degree of advance notice of PGE's proposed change" before the effective date. *Id.* at 7. The Commission also directed PGE file monthly reports on QF activity to provide transparency into PGE's QF negotiations. Therefore, the Commission would likewise have to ensure that any interim changes made here are narrowly tailored to an actual threat of harm and that the QF developers have advanced notice of the change.

In this case, PacifiCorp's proposal for interim relief does not meet any of the applicable criteria. PacifiCorp's claims of irreparable harm are based on the faulty premise that its customers would be forced to pay "inaccurate avoided cost prices" absent immediate relief. *PacifiCorp's Motion for Emergency Relief*, at 15 (April 26, 2018). But that is not true. Updating the rates under the currently approved methodology would not lead to inaccurate calculations. As stated above, the accuracy of PacifiCorp's cost estimates is at issue and should be thoroughly investigated before any relief is warranted because PacifiCorp's proposed renewable avoided costs do not include avoidable transmission costs. Additionally, PacifiCorp overstates the alleged harm that will be caused by continuing to offer non-renewable rates. Given that the proposed non-renewable sufficiency period reaches through 2029, the non-renewable rates proposed by PacifiCorp are not high enough to cause much interest from QFs in any event. PacifiCorp provides no basis to expect a flood of QF applications for those rates in the absence of emergency relief. Without any reasonable claim of harm, this kind of change should be implemented prospectively, if at all, and only after a complete investigation.

Moreover, PacifiCorp's request contradicts the Commission's statutory duty to create a settled and uniform institutional climate for QFs and increase the marketability of energy produced by QFs in Oregon, ORS 758.515(3)(b), and the policy of limiting out-of-cycle updates. The Commission has stated that out-of-cycle updates should be limited to situations of "significant change" and the Commission's expectation was that such changes would be used infrequently. *Re Commission Investigation Into QF Contracting and Pricing*, Order No. 14-058. There is no significant change here. The motion for immediate relief on a substantial (and previously rejected) policy proposal provides a substantial disruption to QF negotiations and threatens the availability of PacifiCorp's current avoided cost rates. In addition to its other shortcomings, PacifiCorp's filing does not provide sufficient notice for developers to act upon.

In sum, PacifiCorp's proposal for emergency implementation of its new policy proposal is without merit and should be denied.

III. CONCLUSION

For the reasons stated above, the Joint QF Parties request that the Commission take the following actions:

- Require PacifiCorp to include the costs of its Wyoming transmission line with the costs of the avoidable renewable resource in Wyoming, which should result in a significant increase in PacifiCorp's renewable avoided costs;
- Reject PacifiCorp's proposal to reverse this Commission's policies that provide eligible QFs with the choice between selling under non-renewable or renewable avoided cost rates;
- Require the corrected rates go into effect promptly.

Dated this 11th day of May 2018.

Respectfully submitted,

/s/ *Gregory M. Adams*

Gregory M. Adams (OSB No. 101779)
Peter J. Richardson (OSB No. 066687)
RICHARDSON ADAMS, PLLC
515 North 27th Street
Boise, ID 83702
Telephone: 208-938-7900
Fax: 208-938-7901
greg@richardsonadams.com
peter@richardsonadams.com

Of Attorneys for the Community Renewable Energy Association

/s/ *Irion Sanger*

Irion Sanger
Sidney Villanueva
SANGER LAW, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com
sidney@sanger-law.com

Of Attorneys for the Renewable Energy Coalition