

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1729(1)

In the Matter of)	
)	RESPONSE COMMENTS OF
PACIFICORP, dba PACIFIC POWER,)	THE COMMUNITY
)	RENEWABLE ENERGY
Schedule 37 Avoided Cost Purchases from)	ASSOCIATION AND THE
Eligible Qualifying Facilities)	RENEWABLE ENERGY
)	COALITION
)	

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”) along with the Renewable Energy Coalition (“Coalition”) (“Joint QF Parties”) file response comments regarding the July 15, 2016 Public Utility Commission of Oregon (“Commission”) Staff (“Staff”) Draft Memo (“Memo”) regarding PacifiCorp’s (or the “Company’s”) application to update its Schedule 37 qualifying facility (“QF”) information.

The Joint QF Parties recommend that the Commission adopt the analysis in Staff’s memorandum with regard to the renewable rates effective on and after the public meeting on August 2, 2016, regardless of how the Commission resolves any other issues. While these comments focus on areas of disagreement with Staff’s Memo, there should be no mistake that Staff’s primary recommendation regarding the renewable avoided cost rates is well supported.

The Joint QF Parties, however, disagree with Staff’s analysis on the standard rates (i.e. the rates available for QFs that do not convey environmental attributes to PacifiCorp). The Joint QF Parties request that Staff reconsider its recommended standard

rates sufficiency-deficiency demarcation and conduct a more thorough analysis of PacifiCorp's resource position. Now is the time in which Staff and intervenors have the opportunity to review, challenge, and obtain Commission resolution regarding the avoided cost rate inputs and assumptions. Staff has not addressed the fact that PacifiCorp's proposal to move the date of its thermal resource need date from 2024 to 2028 is inaccurate. The failure to properly review and correct PacifiCorp's proposed date of deficiency for standard resources essentially abdicates to the Company the ability to unilaterally determine its avoided cost rates.

The Joint QF Parties also oppose re-addressing renewable avoided cost rates until after PacifiCorp's integrated resource plan ("IRP") or IPR Update are acknowledged. Staff should withdraw its new proposal to use the Renewable Portfolio Standard Implementation Plan ("RPIP") on an ad hoc basis to revisit renewable sufficiency periods.

II. COMMENTS

A. Staff's Position

Staff has recommended the Commission adjust PacifiCorp's renewable sufficiency period to 2018, based on SB 1547, but does not support adjusting PacifiCorp's proposed standard sufficiency period.¹ Although Staff considers SB 1547 a

¹ The current sufficiency demarcation dates for PacifiCorp are 2024 for renewable resources and 2024 for standard resources. PacifiCorp's original filing proposed renewable rates with no deficiency period (effectively a date past 2038), and to move the standard rate year of deficiency out to 2028. PacifiCorp's Supplemental Application has proposed moving the renewable date up to 2018 and the standard date out to 2028. Staff also recommends moving the renewable date up to 2018 and the standard date out to 2028. The Joint QF Parties agree with moving the renewable date up to 2018, but propose leaving the standard date at 2024.

“foundational resource planning change” it believes some impacts of SB 1547 are “too nebulous to capture” and therefore recommends extending PacifiCorp’s standard avoided cost rates.

After carefully reviewing the underlying facts and whether they were supported by adequate evidence, Staff has also rejected PacifiCorp’s new renewable cost and performance assumptions, which PacifiCorp alleges to be based on preliminary bids into its unregulated RFP, and recommends using the inputs from the Company’s last acknowledged IRP instead. Staff did not, however, independently analyze the reasonableness of PacifiCorp’s IRP standard rate sufficiency period assumptions, which have never been addressed by the Commission, or how the closure of two coal plants and increased reliance on the short-term market would impact the Company’s resource needs.

Finally, Staff suggested PacifiCorp’s upcoming RPIP process may provide the Commission and stakeholders an opportunity to vet the updated renewable deficiency period as well as resource cost and performance inputs. This is a confusing suggestion in Staff’s memorandum that does not clearly follow any established Commission order or the rest of the Staff’s memorandum. It is unclear if Staff is proposing that the RPIP be used on a permanent basis to address renewable sufficiency periods, or as a one-time re-analysis of the current rates after approval at the public meeting on August 2, 2016.

B. Joint QF Parties’ Position

The Joint QF Parties agree with Staff’s proposal on renewable rates. We recommend that the Commission adopt the analysis in Staff’s memorandum with regard to the renewable rates effective on and after the public meeting on August 2, 2016, regardless of how the Commission resolves any other issues.

However, the Joint QF Parties disagree with Staff's recommendation regarding standard avoided cost rates, i.e. the rates available to QFs that elect to sell energy and capacity without conveying any environmental attributes to PacifiCorp. Were Staff to apply the same approach to standard avoided cost rates as it did to renewable rates, it would engender a different result. The Joint QF Parties therefore strongly oppose Staff's lack of analysis and support for its conclusion regarding the standard rate demarcation and urge Staff to reconsider its position.

Staff's suggestion to address the renewable year of deficiency in an RPIP also brings to light the stark inequity in determining sufficiency-deficiency demarcations and raises serious concerns about how these demarcations will be addressed in the future. The Joint QF Parties note that Staff's proposal would be a significant departure from Commission precedent, and Staff strongly opposed a similar approach in UM 1610. The Commission needs to establish a consistent and systematic policy that allows parties their due process rights in addressing the most important criterion in avoided cost pricing: the resource sufficiency and deficiency demarcation.

1. The Process to Review Avoided Cost Rates is Flawed

Commission policy does not permit the Company to unilaterally set avoided cost rates. Instead, interested parties are provided the opportunity to challenge a utility's avoided cost rates through contested case proceedings because "[s]tandard rates for purchases shall be implemented . . . [i]n the same manner as rates are published for

electricity sales”² The Commission has clarified that utilities’ avoided cost methodologies should be simple, clear, and should include “inputs and assumptions taken from IRPs that are subject to stakeholder review.”³ In actuality, Staff and stakeholders rarely request to review the rates in a contested case proceeding and, other than in recent years, historically have raised no or few substantive issues with the utilities’ avoided cost rate filings.

Generally, the starting point for review of avoided cost rates is the last acknowledged IRP.⁴ The IRP process allows the Commission and parties to evaluate a utility’s resource strategy covering a 20-year time horizon. Utilities are required to submit updated avoided cost filings within 30 days of acknowledgement of their IRPs and on May 1 of every year.⁵ After much debate, the Commission determined challenges to a utility’s avoided cost calculation should occur after the acknowledgement of a utility’s IRP, but the Commission passed up an opportunity to clarify disagreements among the parties regarding what the Commission’s actual process is.⁶

² OAR § 860-029-0040(4). The rules further provide that: “Any standard rates filed under OAR 860-029-0040 shall be subject to suspension and modification by the Commission.” OAR § 860-029-0080(6).

³ Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014) (all inputs and assumptions should initially be drawn from the IRP).

⁴ Id.; Re Investigation into determination of resource sufficiency, pursuant to Order No. 06-538, Docket No. UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010) (the IRP process is the appropriate venue for addressing sufficiency/deficiency issues).

⁵ Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 2 (Feb. 24, 2014) (the annual update may be waived if it falls within 60 days of May 1).

⁶ Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 14 (May 13, 2016).

The sequence of PacifiCorp's recent avoided cost filings is relevant to Staff's approach in the Memo, because it demonstrates how one-sided the discussion on the standard rate sufficiency-deficiency demarcation has been. On February 29, 2016, the Commission acknowledged PacifiCorp's IRP, without addressing sufficiency periods.⁷ The following day, on March 1, 2016, PacifiCorp filed its first supplemental avoided cost update. On March 23, 2016, the Commission rejected that filing and directed PacifiCorp, Staff, and stakeholders to work together to update PacifiCorp's avoided costs.⁸ The following week, on March 31, 2016, PacifiCorp filed a 2015 IRP Update, but did not seek acknowledgment from the Commission.⁹ Less than two weeks later, on April 11, 2016, PacifiCorp issued two requests for proposals ("RFPs") for new renewable resources. Finally, after discussions between PacifiCorp, Staff, and stakeholders failed to achieve the Commission's March 23, 2016 directive, PacifiCorp filed a revised Schedule 37 on June 21, 2016. None of these filings have allowed stakeholders an opportunity to conduct discovery with the purpose and goal of obtaining resolution of PacifiCorp's cost and performance assumptions used to set its sufficiency demarcation.

The current situation is unique, because PacifiCorp has proposed changes from its acknowledged IRP, but the Commission has provided guidance that stakeholders should be permitted to challenge questionable inputs. The Commission has repeatedly reminded

⁷ Re PacifiCorp, dba Pacific Power, 2015 IRP, Docket No. LC 62, Order No. 16-071 (Feb. 29, 2016) ("This order memorializes our decision, made at a December 17, 2015 Special Public Meeting to acknowledge PacifiCorp, dba Pacific Power's 2015 Integrated Resource Plan (IRP).").

⁸ Order No. 16-117 at 1.

⁹ Re PacifiCorp, dba Pacific Power, 2015 IRP, Docket No. LC 62, PacifiCorp IRP Update at cover letter (Mar. 31, 2016) ("The 2015 IRP Update is being submitted for informational purposes only and the Company does not request acknowledgment of its 2015 IRP Update.").

parties of this opportunity, which still applies despite the uniqueness of PacifiCorp's filing. In Orders No. 05-584 and 06-538 the Commission encouraged parties to seek suspension of an avoided cost filing to address concerns about natural gas forecasts or "any other aspect of a utility's filing."¹⁰ On March 22, 2016, Staff recommended suspension of PacifiCorp's avoided cost filing to allow additional time to verify the 2015 IRP inputs for both the renewable and non-renewable avoided cost prices and to consider what impacts SB 1547 should have on the start date of PacifiCorp's next renewable resource deficiency period.¹¹

In the Memo, Staff conducted the correct analysis regarding PacifiCorp's renewable avoided cost rates. Staff started with PacifiCorp's last acknowledged IRP, and made reasonable changes that were supported by PacifiCorp's filing. For example, Staff determined SB 1547 and PacifiCorp's most recent RFPs supported a change in the IRP's assumption that PacifiCorp would not acquire new renewable resources for a couple decades to 2018.¹² PacifiCorp did not provide any evidence for the other changes it requested, namely capital costs and capacity factors, but Staff still reviewed them, and ultimately determined that they were not reasonable.¹³

Staff did not, however, conduct this same analysis regarding the standard avoided cost rates. The Joint QF Parties recommend the sufficiency period remain at 2024 for

¹⁰ Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 36-37 (May 13, 2005); Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006).

¹¹ Memo at 2.

¹² Memo at 7.

¹³ PacifiCorp refused to respond to discovery requests asking the Company to provide factual support for its capital cost and capacity factor assumptions. Joint QF Parties Comments at Attachment A at 1 (July 1, 2016).

non-renewables rather than extending to 2028, as PacifiCorp has requested.¹⁴ Staff did not analyze whether the Joint QF Parties' support for its proposal was reasonable, but instead rejected it because it was deemed inconsistent with PacifiCorp's last acknowledged IRP. Without reviewing their reasonableness, Staff effectively rejected PacifiCorp's standard rates cost and performance inputs from its IRP update and actual resource actions, in favor of the inputs from its acknowledged IRP that have never been fully vetted.

This analysis is inconsistent with the approach Staff took for the renewable demarcation, because Staff did not analyze whether it is reasonable to assume a more accurate standard rate sufficiency period given recent events. Staff summarily stated its conclusion that SB 1547 would not impact standard rates, but declined to address the impact of recent plant closures on standard rates. Staff should complete an independent analysis of whether the sufficiency-deficiency demarcation still makes sense for standard rates in light of PacifiCorp's announcements that it will be closing two coal plants and the Company's flawed assumptions regarding the ability to plan on wholesale market purchases.

Staff's approach is not only inconsistent with its own Memo, but is also inconsistent with its prior direction. In UM 1610 Phase II, the Coalition argued that stakeholders need an opportunity to review sufficiency-deficiency demarcation in the IRP. Staff argued that the IRP was not the correct place to challenge inputs, suggesting a

¹⁴ PacifiCorp's current sufficiency period for standard rates is 2024 and its avoided cost update filing requests an extension to 2028, based on incorrect IRP assumptions and the unvetted responses to its recent RFPs.

post-IRP avoided cost rate case better conforms with Commission rules and policy.¹⁵

The instant case is just such a post-IRP avoided cost case. Staff's current approach would deny stakeholders an opportunity to challenge PacifiCorp's inputs and assumptions in both the IRP and a post-IRP review.

Making no changes to the standard demarcation is also inconsistent with previous recommendations that the acquisition of new generation resources changes the sufficiency period. Staff has supported extending sufficiency periods to lower avoided cost rates after utility resource acquisitions. For example, in UM 1725 Staff argued it was appropriate for Idaho Power to extend its resource sufficiency period because it acquired 400 MW of capacity.¹⁶ In UM 1664, Staff similarly recommended that PGE update its avoided cost price due to significant changes in circumstances after PGE's RFP that acquired Carty and Port Westward.¹⁷ These changes were "out of cycle" updates at times in which the Commission was not already reviewing avoided cost rates changes. In other words, the hurdle for changing the rates was higher than a planned, post-IRP update at issue now. Staff did not address in its Memo how extending resource sufficiency, even for the acquisition of 400 MW of capacity, can justify a sufficiency change whereas

¹⁵ Re Investigation into QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 12 (May 13, 2016).

¹⁶ Re Idaho Power Company Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, Staff's Opening Testimony, Staff/100 at Andrus/3 (July 31, 2015).

¹⁷ Re PGE Application to Updates Schedule 201 QF Information, Docket No. UM 1664, Staff Report at 1-2 (Sep. 23, 2013).

retiring 724 MWs of coal plants in the next ten years and taking nearly 3000 MW of coal offline by 2029 does not support maintaining an existing year of deficiency.¹⁸

There was never thorough analysis to determine if the assumptions regarding PacifiCorp's year of deficiency in its acknowledged IRP were flawed. PacifiCorp set these dates unilaterally in its IRP, and the Joint QF Parties are not aware of any party other than the Coalition questioning or reviewing their reasonableness. The Coalition tried to challenge PacifiCorp's inputs and assumptions and was not able to get a ruling from the Commission.¹⁹ Even more importantly, the Coalition's critique of the IRP was immediately proved correct when the Company announced the retirement of two coal plants, just as the Coalition argued in the IRP.²⁰ The Commission shared the Coalition's concerns during the March 22 Public Meeting,²¹ but were unsure how to respond

¹⁸ Re PacifiCorp, dba Pacific Power, 2015 IRP, Docket No. LC 62, PacifiCorp's IRP Update at 38 (Mar. 31, 2016) (stating Naughton Unit 3 retirement in 2017 reduces capacity by 337 MW and Cholla Unit 4 retirement in 2024 reduces capacity by 387 MW); Robert Walton, PacifiCorp embraces efficiency, plans to reduce coal burn in IRP, UTILITY DIVE (June 16, 2015), <http://www.utilitydive.com/news/pacificcorp-embraces-efficiency-plans-to-reduce-coal-burn-in-irp/400790/>.

¹⁹ Re PacifiCorp, dba Pacific Power, 2015 IRP, Docket No. LC 62, Coalition Comments at 3-5 (Oct. 15, 2015).

²⁰ The Coalition argued that PacifiCorp would retire more coal plants sooner than its original IRP projected. Re PacifiCorp, dba Pacific Power, 2015 IRP, Docket No. LC 62, Coalition Comments at 3-5 (Oct. 15, 2015) ("A more reasonable strategy would likely involve more and earlier coal plant retirements. All of these points raise the issue of the uncertainty of a deficit year . . .").

²¹ Commissioner Savage proposed a friendly amendment to Chair Ackerman's motion suggesting the parties focus only on renewable prices, noting, "I'm okay with the baseload stream." March 22 Public Meeting at 1:03:45. Chair Ackerman responded, "I'm not sure I'm okay with the baseload, John." Id. at 1:04:06. Later Commissioner Savage explained to PacifiCorp, "You can come in here and argue that the prices are too high, but I don't know if I believe that." Id. at 1:06:58. Chair Ackerman added to PacifiCorp, "I think Commissioner Savage is giving

procedurally and opted to direct the parties to come up with a collaborative process, which ultimately did not work.

Now is the time for Staff and the Commission to carefully review whether, at least for avoided cost rate setting purposes, PacifiCorp's deficiency date is reasonable in light of its reliance upon short term market purchases and its upcoming coal fleet retirements. PacifiCorp is currently focusing on transmission expansion and balancing authority consolidation, but will likely shift focus and construct new thermal generation well before the late 2020s. While an IRP year of deficiency about a decade out is completely irrelevant for actual planning purposes, it has a major impact on avoided cost rates, and QFs should not be significantly underpaid because neither PacifiCorp nor the Commission have fully vetted the Company's arbitrary date. In absence of a real analysis that is subject to challenge, a reasonable resolution is to simply keep the current 2024 resource sufficiency-deficiency demarcation. Simply accepting PacifiCorp's proposal to further move out the standard rate year of deficiency is factually inaccurate, will preclude QFs from obtaining the opportunity to challenge PacifiCorp's inputs and assumptions, and violates fundamental due process rights.²²

2. Staff's Proposal to Review in an RPIP is Also Flawed

Staff suggests that Joint QF Parties can litigate renewable but not standard rate issues in PacifiCorp's RPIP process, despite its previous recommendation that inputs and

you the benefit of the doubt, because I don't believe those avoided costs. I flat out don't." Id. at 1:07:11.

²² Commissioner Bloom specifically stated, "we want an updated IRP that gives Irion, [Sylvia], their clients, and whoever else is in the room, that due process opportunity to really investigate and explore the issues that we're talking about, which is essentially the sufficiency, deficiency periods." Id. at 1:06:20.

assumptions like sufficiency demarcations should be considered in the compliance filing and not in a planning document. The practical effect will be to provide PacifiCorp an immediate opportunity to move out the year of renewable deficiency in isolation in a forum that was not designed or ever intended to address avoided cost rate issues.

While the Joint QF Parties believe the IRP process is the best place to review these issues, because everything that can impact sufficiency determinations can be reviewed at the same time, their main concern is establishing a meaningful opportunity for review. That opportunity should allow QFs to challenge the inputs and assumptions, to know where and when it can do so going forward, and to have the sufficiency period change approximately every two years on a scheduled basis.²³ Unlike the utilities, QFs have limited budgets and should not be required to constantly litigate avoided cost rate inputs and assumptions across a wide array of Commission proceedings.

The RPIP is not an ideal forum, but the Joint QF Parties are not opposed to Staff's proposal in the future, after the ground rules are properly established and RPIP is re-designed to ensure that it can accommodate this expansion of its purpose. Because the RPIP was not designed for addressing sufficiency-deficiency issues, and parties did not know that they would be used in that way, pause is warranted before pursuing this option. If the sufficiency-deficiency issue is going to be litigated in an RPIP, then the Commission should open an investigation to identify the proper forum for litigating this issue and revise the rules and process of the RPIP to properly address this issue going

²³ Ideally the Joint QF Parties would keep the basic update process determined in UM 1610 Phase I, Order No. 14-058, in which there are minimum annual updates plus an update after IRP acknowledgement, which occurs about every two years.

forward in a consistent and formal manner. The Commission would also need to establish a forum to challenge the standard rates outside of the RPIP process.

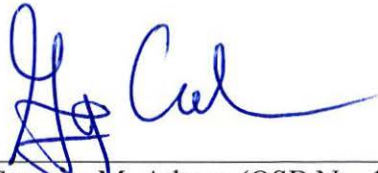
Staff's RPIP approach also is a Catch 22 for QFs because it is limited to renewables, which does not provide an opportunity to challenge standard sufficiency assumptions. The Joint QF Parties have now sought and, if Staff's preliminary recommendation is adopted, will be denied review on standard rates in both the IRP process and afterwards. In short, after much debate the Commission simply must identify the appropriate time for QFs to challenge the inputs and assumptions that determine their avoided cost rates.

III. CONCLUSION

The Joint QF Parties agree with Staff's analysis for the renewable rates. However, for the reasons stated above, Staff should reconsider its analysis of PacifiCorp's standard rate demarcation and its confusing suggestion that parties should challenge the renewable cost inputs in PacifiCorp's RPIP process. PacifiCorp's inputs and assumptions regarding the sufficiency demarcation from its original 2015 IRP were inaccurate, and the Coalition requested an opportunity to challenge them in that process. That request was denied. Now, the best information supports a conclusion that the early retirement of two coal plant resources and PacifiCorp's over-reliance on front-office transactions establish that PacifiCorp's sufficiency demarcation should not be extended.

Dated this 22nd day of July 2016.

Respectfully submitted,



Gregory M. Adams (OSB No. 101779)
RICHARDSON ADAMS, PLLC

Of Attorneys for the Community Renewable
Energy Association



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

Of Attorneys for the Renewable Energy Coalition