BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1802

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation to Examine PacifiCorp, dba Pacific Power's Non-Standard Avoided Cost Pricing.	RENEWABLE ENERGY COALITION COMMENTS ON PACIFICORP COMPLIANCE FILING

I. INTRODUCTION

The Renewable Energy Coalition (the "Coalition") files these Comments respectfully requesting the Oregon Public Utility Commission (the "Commission" or "OPUC") approve PacifiCorp's May 18, 2018 compliance filing (the "Compliance Filing") with one exception: the Commission should reject PacifiCorp's new and unrelated language requiring QFs to "includ[e] copies of any completed interconnection studies or agreements" to obtain indicative pricing.[1] The Compliance Filing is responsive to Order No. 18-131, which confirmed PacifiCorp must offer a nonstandard renewable rate and directed PacifiCorp to use its previous methodology to calculate renewable nonstandard avoided cost rates. In addition to making that change, the language added by PacifiCorp also suggests that it may begin requiring completed interconnection agreements before providing indicative pricing. This new language was not requested by the Commission—in Order No. 18-131 or otherwise. Moreover, the Federal Energy Regulatory Commission ("FERC") expressly stated that utilities cannot require

1 Compliance Filing at 1 (modifying 38.2 Section B).

interconnection agreements from qualifying facilities ("QFs") seeking a power purchase agreement ("PPA").[2] PacifiCorp's Compliance filing therefore introduces changes that were not directed by this Commission and are inconsistent with FERC Public Utility Regulatory Policies Act ("PURPA") policy. If PacifiCorp wishes to make changes regarding the information necessary to obtain indicative prices, then it should file a separate request and explain why the change is necessary. The Coalition is generally concerned that PacifiCorp is using the interconnection process to refuse to negotiate or enter into power purchase agreements, and the Commission should carefully understand the grounds for any changes before allowing them to go into effect. Thus, the Compliance Filing should be approved subject to the removal of the language regarding interconnection agreements.

II. BACKGROUND

The context of this proceeding highlights the need to check PacifiCorp's tendency to unilaterally implement its own regulatory changes. By way of reminder, this docket was opened to determine *if* PacifiCorp should be required to offer a separate nonstandard renewable avoided cost price stream to QFs and, if so, *how* that rate should be calculated.[3] This was necessary after it came to light that, when PacifiCorp requested the authority to change its methodology for calculating avoided cost prices, it intended to stop offering larger QFs a separate renewable price.[4] Unfortunately, this change was not

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2 FLS Energy, Inc., 157 FERC ¶ 61,211 (2016).

3 Re OPUC Staff Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 16-429 (Nov. 19, 2016).

4 In UM 1610, the Commission confirmed that PacifiCorp, PGE, and Idaho Power need not use the same methodology to calculate non-standard avoided costs prices, and allowed PacifiCorp to begin using a Partial Displacement Differential

obvious during the proceeding where PacifiCorp discussed its preferred methodology.[5] Neither Staff, the QF parties or even the Commission understood that PacifiCorp's proposal in UM 1610 was to eliminate the large renewable avoided cost rate methodology. As such, when the Commission approved PacifiCorp's request, it did not intend to adopt any deviations to its general policy, but issued an order that had the practical result of removing the requirement that PacifiCorp to offer separate renewable and nonrenewable avoided cost prices.[6] Thus, a major change in PURPA policy occurred without Staff, the QF parties or the Commission's knowledge because PacifiCorp did not explain the monumental practical effect of its proposal.

In this proceeding (UM 1802), PacifiCorp never argued that it should be allowed to only offer one avoided cost rate and instead focused on several novel ways that it could modify the PDDRR methodology to calculate nonrenewable prices for large QFs. More specifically, PacifiCorp argued these prices should: 1) derive from a new and complex "like-for-like" resource requirement; 2) remove the market price floor (despite the Commission's direction to include a market price floor); 3) assume that PacifiCorp's

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Revenue Requirement ("PDDRR") methodology. Re OPUC Staff Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 (May 13, 2016). Previously, both PGE and PacifiCorp had used the methodology set out in UM 1129 (the Adjusted Standard Price Method), where the utilities begin with their standard contract pricing as the starting point for their non-standard contract negotiations, and then made adjustments according to the seven factors enumerated by the Federal Energy Regulatory Commission ("FERC") in 18 CFR 292.304(e).

5 See Re OPUC Staff Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, OPUC Public Meeting (Oct. 25, 2016) (addressing the surprise in PacifiCorp's Compliance Filing).

6 Re Commission Investigation into Resource Sufficiency Pursuant to Order No. 06-538, Docket No. UM 1396, Order No. 11-505 (Dec. 13, 2011) (establishing a separate renewable avoided price stream).

entire QF queue, including QFs that have merely requested contracts, will become commercially operational; and 4) exclude economic renewable acquisitions (like the 2020 Wyoming wind resource). The Coalition, along with Staff and other stakeholders, opposed PacifiCorp's filing. The Coalition opposed the use of the PDDRR methodology, but believed that the PDDRR methodology could be used to set renewable avoided cost rates for large QFs if it was revised. The Coalition specifically recommended that the Commission either make changes to PacifiCorp's PDDRR methodology to more accurately calculate the value of renewable resources, or require PacifiCorp to revert to its old method.

Ultimately, the Commission directed PacifiCorp to continue using its previous methodology (the Adjusted Standard Price Method) to calculate renewable avoided cost rates, and file revised avoided cost schedules accordingly. Instead of simply following the Commission's direction, PacifiCorp decided to inject another unilateral change via the Compliance Filing. This means that in both this docket and its predecessor, PacifiCorp has chosen to unilaterally make changes to its avoided cost calculations without adequately informing the Commission regarding why the change is proposed, or allowing stakeholders to address the merits of its proposals. This puts the Commission in the position of adopting proposals it may not fully understand, which must not be permitted.

III. COMMENTS

A. The Compliance Filing Includes Changes that Were Not Included in This Commission's Directive

PacifiCorp has added language that requires QFs to provide copies of interconnection studies and agreements to receive indicative pricing, but this new language is not responsive to any Commission directive. This raises both substantive and procedural concerns. Substantively, interconnection studies and agreements are not related to setting renewable avoided cost prices. This change should therefore be rejected. Procedurally, compliance filings are intended to implement and comply with Commission orders, not to make other potentially desirable changes. If PacifiCorp wants to make unrelated adjustments, it should do so in something other than a compliance filing.

As a practical matter, absent unusual circumstances, QFs will not have a completed interconnection agreement when requesting indicative prices. The interconnection process is lengthy and often expensive. While it is normally reasonable to have started the interconnection process, it is unreasonable to suggest that it should be anything close to complete before obtaining prices or even obtaining a PPA. As QFs will generally not have interconnection agreements when requesting indicative prices, the new language suggesting that they should provide an interconnection agreement to get indicative prices should be removed. The current language, which merely requires a QF to inform PacifiCorp about the status of its interconnection should be sufficient for all parties.

PacifiCorp refers to the additional language as a "Housekeeping change" without addressing how important this change may actually be. As a reminder, PacifiCorp's language states to obtain indicative prices the QF must provide the "status of interconnection arrangements, *including copies of any completed interconnection studies or agreements.*" A more appropriate revision would read the QF must provide the "status of interconnection arrangements, *including but not limited to a plan to interconnect its facility, an initial interconnection request, or copies of any completed interconnection studies or agreements.*" This would make it clear that the QF does need to provide any completed studies to obtain indicative pricing.

Just as PacifiCorp's proposal to use the PDDRR methodology included problems that were not initially obvious, i.e., removing the nonstandard renewable price stream, this new language may need to be litigated in future proceedings. In an abundance of caution, the Commission should take this opportunity to simply strike the offensive addition.

B. The Compliance Filing May Also Be Inconsistent with FERC Policy

The Coalition interprets PacifiCorp's newly added language to mean that a completed interconnection agreement is relevant to the utility's determination as to whether it will send indicative pricing to a proposed project. It is not. The Commission should take affirmative action to ensure that PacifiCorp will not delay providing indicative pricing based on whether a QF has been able to obtain an interconnection agreement. Allowing PacifiCorp to use the interconnection process to delay QF contracting could, among other things, impermissibly interfere with a QF's ability to establish a legally enforceable obligation.

It is important to consider PURPA's legally enforceable obligation concept when considering the Compliance Filing. FERC has explained that a legally enforceable obligation is broader than a contract[7] and is intended to prevent utilities from avoiding the mandatory purchase obligation.[8] Importantly, FERC has also consistently reiterated that "the establishment of a legally enforceable obligation turns on the QF's commitment, and not the utility's actions."[9]

FERC has also recently discussed how interconnection agreements should not be used to inhibit the formation of a legally enforceable obligation. If a completed interconnection agreement is not necessary to create a LEO, then it should not be relevant to obtain pricing. According to FERC, "just as requiring a QF to have a utility-executed contract, such as a PPA, in order to have a legally enforceable obligation is inconsistent with PURPA and our regulations, requiring a QF to tender an executed interconnection agreement is equally inconsistent with PURPA and our regulations."[10] FERC went on to explain, "[s]uch a requirement allows the utility to control whether and when a legally enforceable obligation exists—e.g., by delaying the facilities study or by delaying the tendering by the utility to the QF of an executable interconnection agreement."[11] Thus, FERC has consistently determined that utilities must not use the portions of the QF contracting process that they control, like executed power purchase agreements or executed interconnection agreements—to interfere with the QF's ability to establish a legally enforceable obligation.

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7 Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 at P.36 (2011).
8 FERC Order No. 69, FERC Stats & Regs ¶ 30,128 at 30,880 (1980).
9 FLS Energy at P.24 (citing JD Wind I, LLC, 129 FERC ¶ 61,148 at P.25 (2009)).
10 Id. at P.23.
11 Id.

The additional language in PacifiCorp's Compliance Filing, may signal that PacifiCorp intends to use a process that it controls, i.e. providing indicative pricing, to delay the QF contracting process by requiring certain interconnection statuses before providing any pricing. PacifiCorp's current Non-Standard Avoided Cost Rates tariff already includes a provision that requires QFs to provide the "status of interconnection arrangements" to obtain an indicative pricing.[12] To be clear, the Coalition supports the idea in principle that a QF should provide the status of the interconnection process in order to proceed through the power purchase agreement process, including obtaining a contract and (in the case of larger QFs) indicative prices.

Importantly, however, PacifiCorp has not explained why any additional language is needed, what practical effect it will have, etc. And the Coalition has concerns that PacifiCorp may be using its interconnection process to avoid providing or finalizing contracts with certain QFs. As such, the Coalition is concerned that this new language signals PacifiCorp may soon require all QFs to obtain an interconnection agreement prior to providing indicative pricing. PacifiCorp should not use the interconnection process to inhibit a QF's ability to enter into a fully executed PPA, and should therefore strike the new, unnecessary and potentially improper language from the Compliance Filing.

IV. CONCLUSION

For the reasons described above, the Coalition urges the Commission to approve PacifiCorp's Compliance Filing absent the additional language requiring copies of interconnection agreements.

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[12] Compliance Filing at 9 (Revised Non-Standard Avoided Cost Rates Redline Version 2).

Dated this 11th day of June 2018.

Respectfully submitted,

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