BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba Pacific Power's Non-Standard Avoided Cost Pricing	)	CASE NO. UM 1802
	)	OPENING BRIEF OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION

I. INTRODUCTION AND SUMMARY

The Community Renewable Energy Association ("CREA") respectfully submits its opening brief in this proceeding. This docket requires the Oregon Public Utility Commission ("OPUC" or "Commission") to resolve important policy questions in its implementation of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and Oregon's Renewable Portfolio Standard ("RPS"), as recently amended by Senate Bill 1547. CREA urges the Commission to provide meaningful opportunities for non-standard qualifying facilities ("QF") in Oregon to sell their renewable energy to PacifiCorp at reasonably calculated renewable avoided cost rates. In the wake of the Commission's decision to lower the eligibility cap for standard renewable rates to 3 megawatts ("MW") for solar QFs, this proceeding will have substantial impacts on development of solar facilities by community-scale projects, and correspondingly the Commission's ability to comply with the requirement in Senate Bill 1547 that eight percent of aggregate capacity in Oregon be served by renewable energy facilities sized 20 MW or less.

For the reasons set forth below and in CREA's testimony, CREA requests that Commission resolve the disputed issues in this case in following manner:

- Adopt Staff's proposal to require PacifiCorp to use the proxy renewable resource with

adjustments identified in Order No. 07-360, instead of a modified version of the partial displacement differential revenue requirement ("PDDRR") method under PacifiCorp's amorphous and continually evolving proposal;

- In the alternative, if the PDDRR method is adopted to calculate non-standard renewable prices, the Commission should include the reasonable recommendations in the testimony of Kevin C. Higgins, including:
    - Reject PacifiCorp's proposal to use like-for-like renewable pricing; instead, any renewable QF should be provided avoided cost pricing based on deferral of the next renewable resource in the Integrated Resource Plan ("IRP"), with appropriate adjustments for capacity equivalence;
    - Reconfirm that the IRP action plan applies prior to Commission approval, which means that the 2017 IRP's Wyoming Wind Resource plus transmission planned for operation in 2021 is the currently deferrable resource;
    - Require PacifiCorp to provide QFs access to the avoided cost pricing information for each of the available pricing options at the outset of the pricing process, instead of restricting them to receive pricing for only the renewable or non-renewable pricing;
    - Implement a QF pricing queue that relies on historic information regarding the likelihood of executed QF contracts resulting in operational facilities instead of PacifiCorp's proposal to assume every QF requesting a pricing will result in an operational facility; and
    - Maintain the market price floor in effect in existing Commission orders.

II. BACKGROUND

A. The Federal Energy Regulatory Commission's Rules

The mandatory purchase provisions of the PURPA require electric utilities to purchase energy and capacity produced by cogenerators or small power producers that obtain status as a QF. 16 U.S.C. § 824a-3(a)(2). The price PURPA section 210(b) requires the utilities to pay to QFs in exchange for their output is termed the "avoided cost rate," which is "the incremental costs of alternative electric energy" or "the cost to the electric utility of electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source." 16 U.S.C. § 824a-3(d). While any small power production QF up to 80 MW must be provided the full avoided costs, states may also require utilities to offer pre-calculated "standard rates" to smaller QFs up to a state-set eligibility cap for such standard rates. 18 C.F.R. § 292.304(c). Federal law directs the state public utility commissions to implement Federal Energy Regulatory Commission's ("FERC") PURPA regulations. 16 U.S.C. § 824a-3(f); *see also* ORS 758.505 *et seq.*

In 2010, FERC clarified that states could provide different avoided cost rate options, including a renewable avoided cost rate available for QFs that enable the purchasing utility to avoid the state's renewable procurement requirements. *Cal. Pub. Util. Comm'n*, 133 FERC ¶ 61,059 (Oct. 21, 2010), *reh'g denied*, 134 FERC ¶ 61,044 (Jan. 20, 2011). In *Cal. Pub. Util. Comm'n*, the California Public Utilities Commission ("CPUC") requested clarification 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." 133 FERC ¶ 61,059, at P 21 (emphasis added). The CPUC explained that California had enacted a state law, titled AB 1613, that required California utilities to procure a specified amount of energy and

capacity from combined heat and power ("CHP") facilities that met stringent efficiency standards. The CPUC questioned "whether it may implement a two-tiered rate structure, where AB 1613-compliant QFs receive rates based on higher, long-run avoided cost rates reflecting more stringent efficiency standards, and non-AB 1613 compliant QFs continue to receive rates based on lower short-run avoided costs." *Id.*

FERC agreed with the CPUC that the avoided cost need not be the lowest possible avoided cost and declared that a state utility commission can implement higher avoided cost rates for QFs that allow the utility to avoid costs of compliance with a state procurement law. This is so because "a state may properly look at the *actual sources* of capacity and/or energy available to the electric utility, *rather than at some theoretical source*, which is not permitted by state law, that may be cheaper." 134 FERC ¶ 61,044, at P 30 (emph. added). "[W]here a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement." 133 FERC ¶ 61,059, at P 27.

B. The OPUC's Implementation of Renewable Avoided Cost Rates

The OPUC promptly requested comment on whether it should change its PURPA implementation in response to FERC's declaration in *Cal. Pub. Util. Comm'n*. *See* Order No. 10-488 at 9. In the ensuing proceeding in UM 1396, "[t]he concept of a renewable resource avoided cost option [wa]s broadly supported among the parties." Order No. 11-505 at 2. There was no suggestion that the renewable avoided cost option should be limited to only the smallest QFs. In fact, PacifiCorp argued that the renewable rate option should be the *only option* available to renewable QFs at times when the renewable avoided cost is lower than the non-renewable avoided cost. *Id.* at 9.

The Commission adopted a separate renewable avoided cost rate. The Commission stated, "[b]ecause ORS Chapter 469A requires that electric utilities meet a renewable portfolio standard through the acquisition of renewable energy credits (RECs) associated with qualifying renewable generation resources, a properly designed renewable energy avoided cost rate for renewable resources would comply with PURPA." *Id.* at 4. The Commission unequivocally rejected PacifiCorp's proposal to limit the options available to QFs, stating "[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. These QFs should be offered an avoided cost stream that reflects the costs that utility will avoid." *Id.* at 9.

Notably, other states have also implemented renewable rates for larger QFs in the time since *Cal. Pub. Util. Comm'n*. For example, in Montana, large QFs have been provided the option of selling at a rate that includes a carbon adder if the contract conveys the environmental attributes to the utility. *See In the Matter of the Petition of Greycliff Wind Prime, LLC to Set Contract Terms and Conditions for a Qualifying Small Power Production Facility*, Montana Public Service Comm'n. Docket No. D2015.8.64, Order No. 7436d, at PP 28-32 (Sept. 16, 2016) (setting rates for 25 MW wind QF with market prices containing a carbon adder because the QF agreed to convey environmental attributes); *In the Matter of the Petition of NorthWestern Energy to Set Terms and Conditions of Contract Between NorthWestern Energy and Greenfield Wind, LLC*, Montana Public Service Comm'n. Docket No. D2014.4.43, Order No. 7347a, at P 28, 2015 Mont. PUC LEXIS 30 (April 14, 2015) (setting avoided costs for a 25 MW wind QF and concluding, "Based on the circumstances of this case and the range of avoided cost estimates shown in the record, the Commission finds that the levelized rate agreed to in the Stipulation for Greenfield's energy, capacity *and RECs* is just and reasonable to NorthWestern's customers, in

the public interest and not discriminatory." (emphasis added)). This precedent demonstrates that renewable-based pricing is now a common component of avoided cost rate schemes, even for large QFs.

In Oregon, the right to renewable pricing is further supported by renewable energy policies that work in tandem with PURPA. Oregon's RPS law specifically references community-based renewable energy projects and declares that such projects "are an essential element of this state's energy future." ORS 469A.210(1). The law further provides a requirement 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 one or both of the following sources: (a) Small-scale renewable energy projects with a generating capacity of 20 megawatts or less; or (b) Facilities that generate electricity using biomass that also generate thermal energy for a secondary purpose." ORS 469A.210(2).

Because the investor-owned utilities are very unlikely to develop or build those types of community-based projects themselves, the Commission's policies under PURPA are critical to meeting these requirements. CREA/100, Skeahan/5. Unlike the other RPS requirements, the eight-percent requirement cannot be easily met by building a few large renewable energy plants because most of these qualifying projects must be 20 MW or under. *Id.* Additionally, it often takes several years for projects to progress to full operation, and therefore waiting until just before 2025 to achieve the eight-percent requirement will be too late. *Id*. At this time, it appears that less than two percent of Oregon's electric capacity is being supplied by renewable projects less than 20 MW in size located in Oregon. *Id.* Proper implementation of PURPA is a critical element of providing community-scale projects with the ability to sell their output to an investor-

owned utility under equitable terms and conditions, at avoided cost rates that are reasonably projected to hold the utility's customers harmless as opposed to the utility's otherwise available long-term generation resources. *Id.* at 6.

The Commission's renewable pricing has been critically important for small renewable projects. *See id.* at 8. With record low gas prices used in the non-renewable rates, the renewable avoided cost rates are the only game in town for small-scale renewable generators – both new projects and existing projects with expiring long-term contracts. *Id.* Additionally, access to these renewable rates, and the method of calculating them, for non-standard rates has become more important for PacifiCorp recently because the Commission lowered the threshold for standard rates available to solar QFs from 10 MW to 3 MW. *Id.* Any solar QF larger than 3 MW must now use the non-standard renewable rates for PacifiCorp at issue in this proceeding. In other words, the "*lowest possible avoided cost*"[1] developed primarily with fossil fuel powered inputs has become extremely low, and it is critically important that the Commission make renewable pricing available under PURPA to provide opportunities for independently owned resources and resource types other than those the utilities are likely to procure on their own.

Although Order No. 11-505 placed no restriction on use of renewable rates by non-standard QFs, the option is not currently available to non-standard QFs selling to PacifiCorp. Ever since Order No. 11-505, PacifiCorp was required to offer non-standard renewable prices based on the methodology set forth in Order No. 07-360, adjusted for renewable projects. Staff/100, Andrus/5. Over Staff's objection, however, the Commission determined at its November 8, 2016 public meeting that since it placed no limits on its adoption of the new

[1] *Cal. Pub. Util. Comm'n*, 133 FERC ¶ 61,059 at P 21.

PDDRR methodology for non-standard QFs in Phase II UM 1610, the Commission implicitly overruled the right of such non-standard QFs to renewable-based pricing as required by Order No. 11-505. *See* Order No. 16-429. In doing so, the Commission eliminated its most important PURPA implementation policy for a large swath of QFs. This result occurred without any substantive debate or explanation in any Commission order as to why renewable rates should be eliminated for non-standard QFs. However, the Commission also opened this investigation "to examine whether PacifiCorp's nonstandard avoided cost pricing should include a renewable price option, and if so, how that renewable price option should be calculated." *Id.*

III. ARGUMENT

The policy question at issue here is very important. Critically, no party disputes that non-standard QFs should be entitled to sell under a renewable-based price. The Commission itself has already determined promptly after FERC's *Cal. Pub. Util. Comm'n* decision that Oregon QFs electing to sell renewable energy should receive full compensation through renewable prices. The sole dispute is over how to calculate those prices. PacifiCorp has made confusing and ever-evolving proposals in this docket for how to provide renewable pricing to non-standard QFs through use of its computer model and complex rules to apply different standards to QFs as opposed to PacifiCorp's own resource acquisitions for rate base. In view of the state policies in favor of independently owned renewable generation and the importance of the issues presented, the Commission should ensure that the outcome of this proceeding results in reasonable opportunities for non-standard QFs to sell their output at renewable-based prices.

A. The Commission Should Adopt Staff's Proposal to Require PacifiCorp to Use the Proxy Renewable Resource with Adjustments Instead of the PDDRR Method

CREA agrees with Staff that the constant flux of PacifiCorp's proposal is compelling

evidence that the PDDRR method is not the best method to calculate renewable-based pricing for QFs. CREA strongly encourages the Commission to return to use of the method established in Order No. 07-360 for renewable-based pricing, as Staff recommends. The PDDRR computer model only calculates an energy price. Thus, the challenge of using this method for a renewable price is the manner in which PacifiCorp develops an avoided capacity price of a renewable resource and applies that price to different renewable resource types. PacifiCorp's position on this point and related details have been a moving target that is not even fully vetted at this point.

PacifiCorp has changed its position on this point throughout this proceeding. First, PacifiCorp proposed to simply follow the method in the non-renewable PDDRR method, which is to simply rely on the next deferrable resource in the IRP. PAC/100, MacNeil/2:10-13. However, when PacifiCorp realized that would mean use of the 2021 Wyoming Wind and Transmission resource identified in the 2017 IRP if PacifiCorp's novel "like-for-like" proposal is rejected, it changed its position and filed a whole new round of opening testimony. In its second round of opening testimony (referred to as its "July 2017 Opening Testimony"), PacifiCorp changes its position to assert that the next deferrable resource identified in the IRP should not apply if it predates the date when penalties for non-compliance with the RPS would begin due a REC shortfall. PAC/300, MacNeil/3-6. Then, it further changed its position in its final round of testimony to propose that the value of production tax credits no longer be levelized over the term of contract pricing and instead serve to lower the QF's rates in only the first 10 years. PAC/400, MacNeil/13-14.

The cumulative effect of PacifiCorp's amorphous and ever-changing proposal is an incomplete record and an incomplete understanding of PacifiCorp's final proposal. For example, CREA suspects there are numerous other components of the rates, such as return on rate base,

that are levelized in the rates in a manner that lowers the rates in the early years. It appears that PacifiCorp's latest proposal related to the PTC values is not reasonable. But we are out of testimony and time to address this new proposal.

It should be no surprise, therefore, that Staff recommends that the Commission not adopt PacifiCorp's proposal. *See* Staff/200, Andrus/9. CREA has significant concerns with the sheer complexity of PacifiCorp's proposal and questions whether PacifiCorp has even fully disclosed, in a transparent manner, all of the workings of its proposal. As noted above, the Commission already accidentally made a major policy change with no discussion in response to PacifiCorp's initial proposal to use the PDDRR method in Phase II of UM 1610. We should also assume that if the Commission approves the newly revised version of the PDDRR method in this proceeding, we will all again learn of new aspects of PacifiCorp's proposal buried in a work paper somewhere in this docket after it is too late.

The Commission should not adopt PacifiCorp's proposed use of the PDDRR method for renewable rates due to its failure to present a coherent and easily understandable method that has been subjected to full scrutiny in this case. Instead, the Commission should revert to use of the prior method of calculating renewable-based rates from Order No. 07-360, as Staff recommends.

B. Alternatively, If the PDDRR Method Is Adopted for Renewable Prices, the Commission Should Include the Reasonable Recommendations of Kevin C. Higgins.

If the Commission adopts use of the PDDRR method for PacifiCorp's use in non-standard renewable rates, CREA urges the Commission to adopt the reasonable recommendations of Kevin C. Higgins to ensure the rates are reasonable for QFs. Mr. Higgins provided detailed explanation of the basis for his rate calculation proposals, which CREA continues to endorse. CREA understands that the Renewable Energy Coalition ("Coalition")

intends to provide detailed legal briefing in support of Mr. Higgins' testimony, which was filed on behalf of both CREA and the Coalition. Instead of repeating the same briefing as the Coalition in support of Mr. Higgins' testimony, CREA refers the Commission to the Coalition's opening brief for discussion of Mr. Higgins' testimony, and summarizes the recommendations therein below:

1. The Commission Should rule that any renewable QF should be provided avoided cost pricing based on deferral of the next renewable resource in the IRP, with appropriate adjustments for capacity equivalence. *See* REC-CREA/100, Higgins/9-16; REC-CREA/300, Higgins/4-6.

2. The Commission should reconfirm that the IRP action plan applies prior to Commission approval for non-standard rates, which means that the 2017 IRP's Wyoming Wind Resource plus transmission planned for operation in 2021 is the currently deferrable resource. *See* REC-CREA/100, Higgins/16-19; REC-CREA/300, Higgins/6-8.

3. The Commission should require PacifiCorp to provide QFs access to the avoided cost pricing information for each of the available pricing options at the outset of the pricing process, instead of restricting them to receive pricing for only the renewable or non-renewable pricing. *See* REC-CREA/100, Higgins/19-21.

4. The Commission should implement a QF pricing queue that relies on historic information regarding the likelihood of executed QF contracts resulting in operational facilities instead of PacifiCorp's proposal to assume every QF requesting a pricing will result in an operational facility, as recommended in the Coalition's testimony. *See* REC/100, Lowe/13-14; REC-CREA/100, Higgins/21-25; REC-CREA/300, Higgins/8-10.

5. The Commission should maintain the market price floor in effect in existing Commission orders. *See* REC-CREA/100, Higgins/25.

IV. CONCLUSION

CREA respectfully recommends that the Commission reaffirm its renewable rate policy is available for non-standard QFs selling to PacifiCorp, and adopt the rate calculation methods discussed herein.

Respectfully submitted on September 18, 2017.

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