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 REPLY BRIEF

I. INTRODUCTION

Pursuant to the Administrative Law Judge's September 15, 2017 Ruling, the Renewable Energy Coalition (the "Coalition") submits this Reply Brief recommending that the Oregon Public Utility Commission (the "Commission" or "OPUC") reject PacifiCorp's proposal to provide nonstandard renewable qualifying facilities ("QFs") avoided cost rates that: 1) include a "like-for-like" resource requirement; 2) remove the market price floor; 3) include PacifiCorp's entire QF queue; 4) exclude the full avoided costs, including deferrable transmission; and 5) exclude economic renewable acquisitions (like the 2020 Wyoming wind resource). Because PacifiCorp's proposal and testimony has already been thoroughly opposed by the Coalition, the Commission staff ("Staff"), the Community Renewable Energy Association, Renewable Northwest, the Oregon Department of Energy, and Industrial Customers of Northwest Utilities in this proceeding, this Reply Brief is limited to addressing a few limited issues in PacifiCorp's Opening Brief.

Many aspects of PacifiCorp's proposal to implement the Partial Displacement Differential Revenue Requirement ("PDDRR") have evolved significantly since UM 1610, but its overall approach remains unworkable, and contrary to Commission policy. Should the Commission adopt PacifiCorp's proposal, it would drive down avoided cost rates for large QFs, force many resource types to accept what is effectively a non-renewable rate, and establish negative avoided cost pricing. The practical result would be the same as today: no meaningful renewable rate for projects above the relevant size threshold (3 MW for solar and 10 MW for all other generation types). The Coalition therefore asks the Commission to reject PacifiCorp's proposal, confirm its existing policies, and consider the larger policy issues raised by PacifiCorp in a subsequent proceeding.

II. ARGUMENT

A. PacifiCorp's PDDRR Methodology Will Only Produce Accurate Pricing If It Is Correctly Configured, and Should Conform with the Commission's Existing Policies

PacifiCorp claims that the Commission has already determined that the PDDRR methodology is more accurate, and effectively suggests that it be allowed to configure the PDDRR however PacifiCorp unilaterally determines to be the "most" accurate. PacifiCorp is also asking the Commission to redefine "deferrable" and this is not the proper proceeding to do so.

1. Like-for-like Renewable Resources Completely Eliminates the Renewable Rate for Many QFs, and Makes the Renewable Rate Practically Unavailable for Most Other QFs, including Solar and Geothermal QFs

Like for like is not more accurate. PacifiCorp's Opening Brief claims that all types of renewable QFs would be eligible for renewable avoided-cost prices, but that mischaracterizes PacifiCorp's proposal. In reality, only some renewable QFs will receive non-renewable rates. PacifiCorp asserts that renewable resources are not interchangeable because they are not acquired solely for their RECs.[1] At bottom, PacifiCorp is trying to change the rules. The Commission has previously ordered PacifiCorp to offer a renewable avoided cost rate based on the next planned least cost and least risk renewable acquisition regardless of whether it is needed for any particular state's renewable portfolio standard, and should do so again.

2. The PDDR Methodology Should Include the Full Avoided Costs Regardless of Geographic Location

PacifiCorp reiterates its claim that the Wyoming wind and transmission resources are not deferrable by Oregon QFs because their economic benefits are time-limited (due to the production tax credit ("PTC")), dependent on each other (an "all-in" project), and going to happen regardless of QF sales in Oregon. PacifiCorp also notes that there is no reasonable methodology to account for the costs of the PTC in the avoided-cost calculation. None of these arguments are factors for consideration in the Commission's process for determining PacifiCorp's avoided cost rates.

Moreover, the key issue is not whether the Wyoming wind resources or their required transmission are included, but the methodology that will be used. These are merely specific and practical examples of how the PDDRR model should calculate renewable rates. Resolution of these issues will provide guidance to PacifiCorp regarding the appropriate use of the PDDRR and avoid future disputes.

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1 PacifiCorp's Opening Brief at 11-12.

The Commission has determined that transmission costs can be included in avoided cost rates, if they are necessary for on-system proxy resources.[2] PacifiCorp's Opening Brief confirms that the additional transmission is necessary for its proxy resource.[3] Thus, the Commission should require PacifiCorp's PDDRR methodology to include the transmission expansion in its renewable avoided cost prices in circumstances where transmission is necessary for the proxy resource.

PacifiCorp asserts that the Wyoming wind resource is not deferrable for several reasons, none of which should be adopted.[4] First, PacifiCorp claims that the PTC cannot be delayed and PacifiCorp would not buy the resource without the PTC. This is inconsistent with the Commission's approach for determining the next proxy resource and setting avoided costs in any other cases that involved the PTC.[5] Similarly, PacifiCorp states that the Wyoming wind resource acquisition is not deferrable because it will not happen without the Wyoming transmission expansion, and will happen regardless of any Oregon QF development. This does not mean the Wyoming wind resource is not deferrable, it simply means that the avoided transmission costs should be included.

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2 Re OPUC Staff Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 8 (May 13, 2016).

3 PacifiCorp's Opening Brief at 21.

4 Id. at 21-23.

5 Re OPUC Staff Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 25-26 (Feb. 24, 2014); see also Re PGE Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM 1728, Order No. 17-177 at Appendix A at 2 (May 19, 2017) (changing PTC from 60% to 100% based upon IRS guidance).

Finally, PacifiCorp points out that there is no reasonable way to determine how the PTC should be included in avoided cost rates.[6] While it is not easy, given how the PDDRR model works, Coalition witness Kevin Higgins explained how this can be accomplished.[7] This difficulty does not provide a reason to exclude the Wyoming wind resource; however, it simply means that the Commission must decide how the PTC will be accounted for, if there is a resource acquisition that utilizes the PTC.

In short, all of the alternative definitions of "deferrable" raised by PacifiCorp may (like RPS-compliance costs) be worthy of additional consideration in another proceeding. The Commission needs to issue an order regarding how PacifiCorp will offer large QFs renewable price stream now, and should adopt a policy that includes the next major least cost and least risk generation regardless of location and, if necessary to wheel the power to load, and the associated transmission. For practical purposes, that means that the Wyoming wind resource is the next planned resource and both it and the transmission necessary to move it out of Wyoming should be the basis for PacifiCorp's avoided cost rates.

3. The Market-Price Floor Should Remain

PacifiCorp now claims that the market-price floor is not legally or factually defensible. PacifiCorp, points out that PURPA does not impose a requirement on purchasing utilities to delivery unusable energy or capacity to another utility for subsequent sale and the Commission has already determined that avoided cost pricing cannot be based upon the value of off-system sales. PacifiCorp mischaracterizes both the federal and state commissions' orders.

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6 PacifiCorp's Opening Brief at 23.
7 REC-CREA/100, Higgins/13-14.

At the federal level, PacifiCorp suggests that FERC Order 69's provisions on third-party wheeling are applicable. But what FERC was addressing in Order 69 was the QFs' *option* to select where they want to sell their power, and to whom. The language cited in PacifiCorp's Opening Brief merely clarifies that QFs cannot compel utilities to wheel their power to other utilities to accommodate their PURPA sales.[8] The Commission's orders impose no such obligation upon PacifiCorp. PacifiCorp also cites to other language from FERC confirming that utilities are not obligated to pay for QF energy that is not needed, which is similarly misguided.[9] PacifiCorp is resource deficient, relies heavily on market sales as part of its long-term planning, is planning to make major investments to increase its resource generation, and cannot credibly argue that it does not need QF power. As PacifiCorp acknowledged, the Commission has already determined that market purchases are likely to be the very transactions avoided during PacifiCorp's sufficiency period.[10]

At the state level, PacifiCorp also argues that two of the Commission's own orders are inconsistent with the market-floor decisions. They are not. First, in an ancient decision from 1984, the Commission considered setting the avoided cost rate on the price the utility could obtain by making firm sales of QF power to California. PacifiCorp argued, among other things, "California seems to require capacity, not capacity and energy" and "QFs are not often able to supply pure capacity."[11] The Commission

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8 PacifiCorp's Opening Brief at 16 (citing FERC Order No. 69 at 12,219 and FERC Order No. 688 at ¶ 24).

9 Id. at n. 69 (citing FERC Order No. 688 at ¶ 61,677-78).

10 Id. at 17 (citing Order No. 05-584).

11 Re The Investigation Of Cost Effective Fuel Use And Resource Development In Oregon, Docket No. UM 21, Order No. 84-720 at 21 (Sept. 12, 1984).

ultimately decided that a "proxy price of firm sales for resale would push the price paid to QFs above the cost of alternative resources available to the utility."[12]

Second, in Order No. 09-343 the Commission was considering whether to modify a special tariff originally approved in 1997, and specifically declined "to rely again on an evaluation of PacifiCorp's avoided costs" to determine whether the negotiated rates were fair and reasonable, under ORS 757.230.[13] When revisiting the special tariff, the Commission explained that the best way to determine PacifiCorp's full costs of serving the large industrial customer was "the use of what economists known as 'opportunity costs'" to PacifiCorp rather than merely comparing the negotiated rates to PacifiCorp's avoided costs. This was in large part, due to the value of capacity. Ultimately the Commission decided, "wholesale market rates reflect the minimum level of rates allowed under ORS 757.230(1)."[14]

The Commission's decisions on the market floor are consistent with these two orders cited by PacifiCorp because the Commission is not requiring PacifiCorp to resell any QF power, basing PacifiCorp's avoided cost prices on its market sales in California, or evaluating the fairness of a particular special tariff. The language quoted by PacifiCorp is merely illustrative of the Commission's ongoing struggle (since PURPA's inception) to accurately value capacity in the utility's avoided costs.

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12 Id. at 22.

13 Re Petition to Protect Wah Chang From Paying Unjust and Unreasonable Costs for Power thru PacifiCorp, Docket No. UM 1002, Order No. 09-343 at 1, 32 (Sept. 02, 2009) ("Returning to ORS 757.230, we reiterate that, with respect to adoption of special tariffs, we must ensure: (1) that the rates that the utility and customer have presented to us for adoption will produce sufficient revenues to cover the utility's costs to serve the customer; and (2) that general rates for remaining costumers remain just and reasonable.").

14 Id. at 34.

Finally, PacifiCorp claims that it has provided evidence that transmission constraints have limited PacifiCorp's ability to resell QF generation, which the Commission has said may justify removing the market-price floor. Yet, PacifiCorp appears to base this upon Staff's "concessions" in this proceeding.[15] According to PacifiCorp,

> Staff appears to concede that transmission constraints cause the difference between indicative avoided-cost prices with and without the market-price floor. Staff therefore appears to concede that transmission constraints have limited PacifiCorp's ability to resell QF generation (otherwise, the market-price floor would not be implicated in the indicative avoided-cost prices). Thus, the record in this proceeding demonstrates … PacifiCorp has already reached the point where transmission constraints have undermined the assumption that PacifiCorp can resell QF generation.[16]

Staff has made no such concessions. To the contrary, Staff states "PacifiCorp has not provided persuasive evidence to show the type of transmission constraint referred to in Order No. 16-317 exists or otherwise shown why the Commission's decision to impose a market-price floor on sufficiency-period prices should be reversed."[17] Staff also explains that "PacifiCorp previously indicated that such transmission constraints do not exist in Oregon" and that the Commission has directed PacifiCorp (not Staff) to notify the Commission "when such conditions actually exist in Oregon."[18] PacifiCorp has made no such notification, and makes no such claim here. Thus, the market floor should remain.

4. The QF Queue Should Include a Reasonable Expectation of QFs that Will Become Operational

PacifiCorp has modified its proposal on indicative pricing to allow QFs to "obtain price certainty, and a higher avoided cost price," based only on executed contracts in the

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15 PacifiCorp's Opening Brief at 18-19.
16 Id. (citations omitted).
17 Staff's Opening Brief at 11.
18 Id. (citing Order No. 16-337 at 6).

QF queue, but only after signing an execution-ready contract.[19] This means that large QFs must complete all of their negotiations, but for the price, to receive usable indicative pricing from PacifiCorp. PacifiCorp claims this is needed to protect customers because two QFs could sign contracts at the same time, without taking into account the precise level of need between the two contracts. This approach overstates the risk to ratepayers and understates the detriment to QF developers.

PacifiCorp also inadequately addresses a sound recommendation from ODOE. Regardless of whether PacifiCorp is permitted to use the entire QF queue to generate indicative pricing, it should periodically be required to remove QFs that are no longer actively negotiating with PacifiCorp from its queue, and refresh its indicative pricing. As ODOE points out, this would provide higher prices to projects lower in the queue.[20] PacifiCorp's Opening Brief confirms that QFs will have the right to request updated pricing once they sign a contract, which ignores the issue of withdrawal absent contract execution.[21]

PacifiCorp should not be permitted to pretend that every QF that has requested indicative pricing provides an "up-to-date representation of PacifiCorp's system and resource costs" or "accurately values the energy and capacity" in indicative pricing.[22] Even PacifiCorp concedes "there is no dispute that avoided costs under the PDDRR methodology decline as additional QF resources are added."[23] Using the assumption that

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19 PacifiCorp's Opening Brief at 24.
20 ODOE/100, Broad/7.
21 PacifiCorp's Opening Brief at 25-26.
22 Id. at 24.
23 Id. at 24-25.

the entire QF queue materializes unnecessarily, unfairly and inappropriately decreases PacifiCorp's avoided cost pricing.

B. New Policy Considerations Belong in a New Docket

PacifiCorp argues that allowing RPS-compliance costs is not reasonable when PacifiCorp's Preferred Portfolio assumes zero RPS-compliance costs.[24] PacifiCorp's request to investigate the RPS-compliance costs *later* (in a generic proceeding) should preclude it from making these arguments now (in this proceeding). PacifiCorp should not be allowed to implement changes to its avoided cost prices before they are fully considered by stakeholders.

PacifiCorp has consistently suggested that the Commission open a generic investigation to determine how RPS-compliance costs should be accounted for, yet continues to evolve its position on how renewable avoided cost rates should be calculated in the meantime. Here, PacifiCorp's Opening Brief mirrors its proposal on the Wyoming wind resource by suggesting "when a renewable QF transfers its RECs to PacifiCorp, the transferred RECs do not allow PacifiCorp to avoid acquiring the renewable resources themselves because those resources are not being acquired only for their RECs."[25] As explained in the Coalition's Opening Brief, the Commission's policy establishing renewable avoided cost rates is based on the next renewable resource acquisition, of which renewable portfolio standards are just one factor in determining the least cost and least risk resource.[26]

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24 Id. at 15.
25 Id. at 27.
26 Coalition's Opening Brief at 25-28.

III. CONCLUSION

The Coalition respectfully requests the Commission reject PacifiCorp's proposal to configure the PDDRR methodology because it is inconsistent with long-held Commission policy and will be detrimental to large QFs in Oregon. The Commission should instead require PacifiCorp to offer large renewable avoided cost pricing, for all renewable types, until it can consider the novel policy issues raised by PacifiCorp in a separate generic proceeding. The Commission should, however, clarify whether its existing policy of allowing PacifiCorp to use some unacknowledged information in the PDDRR methodology means that PacifiCorp should include resources like the Wyoming wind resource in its avoided cost calculation.

Dated this 25th day of September 2017.

Respectfully submitted,

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