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 RESPONSE BRIEF OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION

I. INTRODUCTION AND SUMMARY

The Community Renewable Energy Association ("CREA") respectfully submits its response 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. For the reasons set forth below and in CREA's testimony and its opening brief, CREA continues to request that Commission resolve the disputed issues in this case in the 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 pricing will result in an operational facility; and
- Maintain the market price floor in effect in existing Commission orders.

The Commission should refer to CREA's opening brief for detailed argument and policy basis to adopt these proposals, which will not be repeated in full here. Instead, this brief provides response to the opening brief of PacifiCorp.

II. RESPONSE ARGUMENT

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

PacifiCorp's opening brief further confirms that its proposed use of the PDDRR method for renewable rates is overly complicated, constantly changing, and fatally flawed. If nothing

else, as a regulatory body, the Commission should strive to implement policies that are clear and easily understood. PacifiCorp's proposal is anything but clear or easily understood. Notably, although PacifiCorp uses the PDDRR method to calculate non-renewable rates in other jurisdictions, PacifiCorp has not indicated that it calculates a *renewable* rate with GRID and the PDDRR method in any of the other six states within which it must calculate avoided cost rates. The method is literally untested, and it should meet a heavier burden in this case for that reason. PacifiCorp has failed to meet that burden. Instead, PacifiCorp's itself argues that the method could *not* be used to consistently offer renewable rates to all resource types covered by Oregon's RPS.

PacifiCorp's position is contradictory. It first props up its PDDRR method as a more accurate way to calculate renewable rates, but then criticizes its own method by arguing it cannot actually be used to apply to any type of renewable resource. For example, PacifiCorp's brief asserts that "when the PDDRR methodology allows a renewable QF to replace any other type of renewable QF, it produces results that are inconsistent with PacifiCorp's actual avoided costs." *PacifiCorp's Opening Br.* at 11. Although CREA does not necessarily agree with that statement, as explained in the testimony of Kevin C. Higgins, PacifiCorp's own argument undermines the premise that the PDDRR method is the best way to provide a renewable rate to all QFs eligible as renewable resources under Oregon's RPS.

Apparently recognizing the logical inconsistency in its own argument, PacifiCorp's brief attempts to repair the damage. PacifiCorp submits that PacifiCorp has "clarified that when determining a similar type of QF for purposes of avoided costs, the operating characteristics would govern, not the technology." *Id.* at 14. According to PacifiCorp's brief, "wind, solar, geothermal, biomass, biogas, and hydro QFs would all be eligible for a renewable avoided-cost

price." *Id.* The portions of the testimony cited demonstrate, however, that the deficiency date will be different for different resource types. For example, in the 2017 IRP, because the 2021 Wyoming Wind Resource is the next IRP resource in 2021, only wind QFs would be paid the renewable deficiency price beginning in 2021, with renewable deficiency pricing delayed until at least 2028 for solar resources and 2029 for baseload. *See* PAC/400, MacNeil/5-6 (listing 2017 IRP resources). In other words, PacifiCorp would basically penalize any QF with the operational characteristics of a baseload QF or a solar QF in the circumstance where the next IRP renewable resource is a wind plant, and vice versa.

In addition to the legal flaws identified in Staff's opening brief, this proposal contradicts PacifiCorp's prior efforts to develop different capacity costs for different resource types in docket UM 1610. Specifically, in the same order that accidentally adopted the PDDRR method for renewable resources, PacifiCorp espoused the benefits of valuing the capacity of baseload projects in calculating avoided cost rates, when helpful to reduce rates to other QF types. In its efforts to continue paying solar and wind QFs less than full capacity value through the previous "double-discount" capacity calculation, PacifiCorp argued as follows:

> *PacifiCorp urges that we not change the avoided capacity contribution calculation* adopted in Order No. 14-058, explaining, we correctly adjusted the capacity contribution in Phase I to account for how intermittent QFs contribute (or do not contribute) to the peak-hour capacity needs of utilities in resource deficiency periods. PacifiCorp argues it is appropriate to convert the adjusted capacity contribution of a solar QF to a dollar-per-megawatt-hour and apply it to only the QF's on-peak hours.
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> According to PacifiCorp, Issue 3 "boil[s] down to a proposal that the solar capacity adder should be paid as a fixed dollar amount and that each solar QF should receive the fixed dollar amount regardless of its actual output during on-peak hours." *PacifiCorp argues that this would pay a solar QF for avoided capacity of a base load resource regardless of whether the QF actually provides generation needed to offset the resource*, let alone benefits such as operating

> reserve capacity and the ability to be dispatched on an as needed basis in all hours (which a solar resource does not provide).

Re Investigation Into Qualifying Facility Contracting and Pricing, OPUC Order No. 16-174, at 10 (May 13, 2016) (emph. added).

As this quote demonstrates, PacifiCorp argued that wind and solar resources should be paid for reduced capacity value relative to the proxy baseload plant, which continues to be the Commission's policy today albeit without the double discount. It light of these arguments, PacifiCorp cannot credibly assert that the renewable baseload QF should be paid nothing for its capacity value at the time of the next deferrable renewable resource in the IRP, whatever that resource may be.

PacifiCorp also suggests that GRID is well suited for renewable avoided cost rates because it is used to set retail rates. *See PacifiCorp's Opening Br.* at 9. However, PacifiCorp fails to mention that PacifiCorp has consistently argued in retail rate proceedings that GRID undervalues the actual costs of energy, requiring numerous out-of-model changes and modifications that lead to annual disputes in PacifiCorp's net power cost proceedings. *See In the Matter of PacifiCorp, dba Pacific Power: Transition Adjustment, Five-Year Cost of Service Opt-Out*, OPUC Order No. 15-060 (Feb. 24, 2015); *In the Matter of PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism*, OPUC Order No. 16-482 (Dec. 20, 2016). The problems will be compounded here where the proposed use of GRID for renewable rates is poorly understood and ever-evolving. If PacifiCorp's proposal is adopted, the Commission might expect similar disputes in this context to those that occur with the much more traditional use of GRID to set retail power costs.

The Commission should recognize PacifiCorp's proposal for what it is – the first step in an effort to dismantle the Commission's renewable pricing policies for QFs. Under PacifiCorp's proposal, in particular its "like-for-like" proposal, the renewable rates would be unavailable to most renewable QFs, or easily be made unavailable with the next generation of PacifiCorp's IRP. The reason for PacifiCorp's proposal is easy to understand since it wishes to place 1,100 megawatts ("MW") of wind and transmission in Wyoming in its rate base at enormous profit to its shareholders. But the efforts to dismantle Oregon's renewable pricing options contradict Oregon law and policy, as Staff persuasively argues in its opening brief.

In light of the record developed here, the Commission should return to use of the method established in Order No. 07-360 for renewable-based pricing, as Staff recommends. Staff's arguments on this point are logical, compelling, and soundly based in Oregon's energy laws and policies. The Commission should reject PacifiCorp's proposed use of the PDDRR method for renewable rates and direct PacifiCorp to use the method described in Order No. 07-360, just as Portland General Electric Company currently does.

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 again urges the Commission to adopt the reasonable recommendations of Kevin C. Higgins to ensure the rates are reasonable for QFs. These proposed modifications to PacifiCorp's proposals are listed in the introduction of this brief. The basis for these positions were thoroughly briefed in the opening brief of the Renewable Energy Coalition ("Coalition"), and CREA agrees with the points made by the Coalition. CREA provides additional response to PacifiCorp's position on one of these issues – the proposal to

ignore the planned acquisition of the 1,100 MW of Wyoming Wind Resource for purposes of avoided cost rates. Instead of PacifiCorp's proposal, the Commission should reconfirm that 2017 IRP's Wyoming Wind Resource plus transmission planned for operation in 2021 is the currently deferrable resource for non-standard rates.

PacifiCorp unreasonably argues for preliminary implementation of its proposed new policy on IRP resources without any ruling from the Commission as to the reasonableness of the policy. PacifiCorp argues the Commission should "find that the 2021 Wyoming wind resources included in the 2017 IRP preferred portfolio are not deferrable for purposes of avoided-cost pricing because of their unique factual circumstances." *PacifiCorp's Opening Br.* at 2. The premise of this request is PacifiCorp's assertion that the "current framework for determining avoided-cost prices for RPS-eligible QFs incorrectly assumes that any renewable resources identified in an IRP are being acquired for RPS compliance." *Id.* at 3. Thus, the Commission would have to implement a major change of policy and amend its prior orders on the topic prior to adopting PacifiCorp's request to ignore the 1,100-MW resource for purposes of determining PacifiCorp's avoided cost rates. Yet PacifiCorp has not proven this policy has any merit in this case and asks the Commission not to make an affirmative ruling upon the policy.

Specifically, PacifiCorp's brief states it "is not asking the Commission to rule on the merits of its recommended framework in this case." *Id.* at 4. Instead, PacifiCorp effectively seeks immediate and indeterminate preliminary relief applying this novel new policy to QFs until an open-ended proceeding to address the issue is resolved. *See id.* at 7:6-9. The Commission should reject PacifiCorp's request and reconfirm that its existing orders require that a major resource identified in the IRP is the next resource to be used for purposes of calculating non-standard rates, as PacifiCorp itself concedes is the current policy. *See id.* at 21.

There is no logic supporting PacifiCorp's new policy of "non-deferrable-major-resources." If the resource is cost-effective and planned for acquisition, then the QF has a federal right to sell its output to PacifiCorp at the costs that include consideration of that resource. PacifiCorp concedes the critical facts. It states in its brief that it "has made clear that pursuit of the Wyoming wind resources is not a zero-sum opportunity—PacifiCorp will pursue additional opportunities for least-cost, least-risk resources to meet PacifiCorp's resource needs in addition to the Wyoming wind resources." *PacifiCorp's Opening Br.* at 22. If that is so, no harm will occur if Oregon QFs supply renewable power at rates reasonably calculated to mirror the costs and values supplied by the proposed Wyoming Wind Resource. *See* REC-CREA/300, Higgins/7-8. Perhaps customers will even be better off if an Oregon QF can provide a superior product to PacifiCorp's planned resource, or if an Oregon QF can bring online the next cutting-edge renewable and/or storage technology instead of the more traditional wind-plus-transmission acquisition planned by the utility. The 2021 Wyoming Wind Resource is therefore the next resource that must be used for calculation of avoided cost rates because PURPA requires those rates be set based on the costs of the next increment of power the utility plans to acquire. 16 U.S.C. § 824a-3(a)-(d) (requiring purchases at the "incremental cost of alternative electric energy").

PacifiCorp appears to assert that PURPA contains a loophole that allows the utility to ignore its immediate resource plans if the next planned resource in the IRP is such a great deal that the utility would acquire both the similarly priced QF *and* the IRP resource. But there is no basis for such a loophole in the federal or state laws and regulations. PacifiCorp cites no precedent applying such a loophole, and CREA is unaware of any such precedent. It is safe to assume none exists, and PacifiCorp asks this Commission to be the first to adopt this novel

theory of PURPA well into the statute's fourth decade of existence. If PacifiCorp were to elect to acquire the Wyoming wind resource *in addition* to 1,100 MW of renewable QF projects that contract to supply it renewable energy at the same price, that is PacifiCorp's prerogative and a decision it will need to justify later to its regulators. But the undisputed fact is that the Wyoming Wind Resource (including its transmission) is the next planned resource, and it must therefore form the basis for the renewable avoided costs offered to Oregon QFs.

Furthermore, the underlying premise of PacifiCorp's new theory contradicts the entire policy behind PURPA's enactment. PacifiCorp's argument appears to be that the QFs cannot receive renewable prices based on the Wyoming Wind Resource unless they have the precise operating and locational characteristics of that Wyoming resource. But this notion contradicts well-established and long-standing principles of avoided cost. The entire basis for PURPA was to promote *different* resource types than utilities were building at the time – namely, small power production renewable resources and cogeneration resources. *See, e.g., Am. Paper Inst. v. Am. Elec. Power Serv. Corp*., 461 U.S. 402, 404 (1983). The purpose was to create a market for new resource types that could sell at the costs of the utility's next increment of energy and capacity, regardless of the resource type the utility planned to acquire. As such, the law intends to harness competitive forces to develop more efficient forms of energy production. From the start, QFs were entitled to defer planned utility resources of different types than the QF. That was the very purpose behind FERC's adoption in 1980 of seven detailed factors to consider in calculating avoided costs in 18 C.F.R. § 292.304(e), which allows adjustment to the avoided cost rate to distinguish the specific, unique output of the QF resource type from the utility's next planned resource. The Commission follows this policy, for example, with its adjustment to capacity

values for standard rates that allow a solar QF to defer a gas plant or a renewable baseload plant to defer a planned wind plant, as discussed above.

As such, there is no basis in PURPA for PacifiCorp to argue that the QF must precisely match the supply and operational characteristics of the utility's next planned resource for that resource to be considered in the calculation of the avoided costs of energy and capacity. Otherwise, utilities could obviate their PURPA obligation altogether by constructing only non-PURPA resource types.

CREA opposes PacifiCorp's proposal to implement its "non-deferrable-major-resource" policy. PacifiCorp has not met its burden to prove this policy is lawful. Nor could it because the policy is a patently unlawful attempt to deprive QFs of the right to sell their output to PacifiCorp at the costs of the next increment of generation that PacifiCorp plans to acquire. It should not be implemented on a temporary or permanent basis. The Commission should reject it.

III. 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 and in CREA's opening brief.

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