BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1734

In the Matter of PACIFICORP d/b/a/ PACIFIC POWER's, Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap.	COMMENTS OF RENEWABLE NORTHWEST IN SUPPORT OF JOINT MOTION TO DISMISS

I. INTRODUCTION AND BACKGROUND

Pursuant to the Administrative Law Judge's Ruling of June 2, 2015, regarding responses to the Joint Motion to Dismiss ("Motion") of the Community Renewable Energy Association ("CREA") and Renewable Energy Coalition ("REC") (collectively, "Movants"), Renewable Northwest submits these comments in support of the Motion. The Motion was filed in response to PacifiCorp's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap ("Application").

In its Application, PacifiCorp asks the Public Utility Commission of Oregon ("Commission") to reduce the eligibility cap for standard avoided cost rates from 10 MW to 100 kW for wind and solar qualifying facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), and to shorten the maximum contract term for all QF power purchase agreements ("PPAs") from 15 years to 3 years.

Movants argue that the Application is an impermissible collateral attack on the final order in Phase I of docket UM 1610, Order No. 14-058, as well as a collateral attack on the ongoing proceedings in Phase II of UM 1610, in contravention of the parties' agreed-upon issues list for that proceeding. As explained by Movants, the Commission in Phase I of UM 1610 already

rejected less extreme versions of the same two issues raised in PacifiCorp's Application in this proceeding. Renewable Northwest agrees with Movants that it is not appropriate for PacifiCorp to raise those same issues again in this proceeding. Accordingly, Renewable Northwest respectfully requests that the Commission dismiss PacifiCorp's Application.

II. COMMENTS

As discussed in these comments, PacifiCorp's Application is an improper collateral attack on the final order in Phase I of docket UM 1610, as well as on the ongoing proceedings in Phase II of docket UM 1610. Raising the same issues that have already been decided again in a different proceeding wastes Commission resources and places an undue hardship on intervenors, who are put in the position of allocating limited resources to re-litigating these issues. If PacifiCorp were allowed to pursue this collateral attack on UM 1610, it would create an environment of policy uncertainty that would have a chilling effect on renewable energy development under PURPA. If granted, PacifiCorp's Application would make it extremely difficult to finance PURPA projects within PacifiCorp's Oregon service territory. To the extent that PacifiCorp is or may be experiencing challenges with PURPA implementation, reducing the eligibility cap and shortening the contract term are not the appropriate vehicles for addressing PacifiCorp's concerns.

PacifiCorp's Application is an improper collateral attack on the Commission's Order No. 14-058 issued on February 24, 2014, in Phase I of UM 1610. In Phase I of UM 1610, PacifiCorp recommended reducing the eligibility cap for standard avoided cost rates from 10 MW to 3 MW, and recommended shortening the fixed-price period for all QF PPAs from 15 years to 10 years. Docket UM 1610 PacifiCorp/200, Griswold/3, 16-21 (eligibility cap recommendations); *id.* at 5-6, 31-33 (recommendations on fixed-price period for QF PPAs). In the Commission's order on

Phase I, the Commission declined to lower the eligibility cap for standard avoided cost rates or shorten the maximum length of QF PPAs. Order No. 14-058 at 1-2. PacifiCorp had the opportunity to appeal or seek modification of that order, and did not do so. PacifiCorp's Application in this proceeding thus amounts to a collateral attack on Order No. 14-058.

As further detailed in the Motion, collateral attacks on final orders are disfavored because of the interest in avoiding multiple proceedings on the same issue, conserving judicial resources, and preventing inconsistent decisions. Motion at 5. These principles apply to administrative proceedings. *Id.* at 5-6. Indeed, the Commission has recognized that re-litigating previously decided issues would result in lengthy delays and be prejudicial to other parties. *Id.* at 6. Allowing PacifiCorp to move forward with its collateral attack on Order No. 14-058 would impose a hardship on the other parties to UM 1610 that expended significant time and effort in working toward the outcome in Phase I, particularly for those parties that have limited staff and financial resources to devote to such an undertaking. It would also be a waste of Commission resources and would run contrary to the public interest in the final adjudication of controversies. Allowing yet another challenge to the Commission's established policies on the maximum contract term for QF PPAs and the eligibility cap for standard avoided cost rates would also create an environment of significant policy uncertainty with respect to these two issues that would have a chilling effect on the development of renewable energy QFs under PURPA.

In addition to the negative repercussions of allowing a collateral attack on a final Commission order, enabling PacifiCorp to move forward with its Application also poses problems for the ongoing proceedings in Phase II of UM 1610. As further detailed in the Motion, PacifiCorp and other parties to UM 1610 agreed to an issues list in which the eligibility cap and contract length issues would be addressed in Phase I, whereas specific contracting

processes, terms, and rate calculation issues would be reserved for Phase II. *Id.* at 9-10. Not only does PacifiCorp's Application violate the stipulation signed by several parties to Phase II of UM 1610—including PacifiCorp—regarding the issues list for Phase II, it also upends the expectations of the other parties that worked toward agreement on the issues. As the Motion explains, the parties' analysis of and agreement on the issues list would likely have been very different if they had been aware that there could be a departure from the Commission's determination in Order 14-058 on the contract length and eligibility cap issues. *Id.* at 10-12. It is not reasonable for PacifiCorp to put other parties to UM 1610 in the position of having to aim at a moving target.

We are not unsympathetic to the notion that certain utilities are or may be experiencing challenges with PURPA implementation; however, the approach that PacifiCorp has taken with its Application is not the appropriate way to address any such challenges. As discussed previously, it is important for the Commission to prevent against collateral attacks on its previous orders and on ongoing proceedings. Even assuming that PacifiCorp were not attempting a collateral attack in this instance, as a matter of policy, we oppose lowering the eligibility cap for standard avoided cost rates and shortening the maximum contract term for QF PPAs. Such changes would have a chilling effect on the development of renewable QFs under PURPA, as it would make it extremely difficult—if not impossible—to finance these projects. To the extent that there are implementation issues with PURPA, we think that a more reasonable approach to addressing them would be to focus on examining the avoided cost methodology. Re-litigating previously decided issues is not the right approach, and PacifiCorp should not be allowed to pursue that path in this proceeding.

III. CONCLUSION

For the reasons stated above and in the Motion, the Commission should dismiss PacifiCorp's Application.

RESPECTFULLY SUBMITTED this 10th day of June, 2015.

/s/ Dina Dubson Kelley

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