PACIFIC POWER
A DIVISION OF PACIFICORP

825 NE Multnomah, Suite 2000
Portland, Oregon 97232

February 19, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

RE: UM 1734 —PacifiCorp's Reply Brief

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Reply Brief.

If you have questions about this filing, please contact Erin Apperson, Manager of Regulatory Affairs, at (503) 813-6642.

Sincerely,

R. Bryce Dalley / EA

R. Bryce Dalley
Vice President, Regulation

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

In the Matter of: PACIFICORP, d/b/a PACIFIC POWER Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap.	**UM 1734**

PACIFICORP'S REPLY BRIEF

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I. INTRODUCTION

This case highlights the inherent tension between the Public Utility Regulatory Policies Act's (PURPA) policy goals of reducing market barriers to Qualifying Facility (QF) development, and its legal requirement that utilities be held indifferent to QF generation. The Public Utility Commission of Oregon (Commission) has correctly recognized its responsibility to balance these objectives.[1] However, in the end, the *policy goals* of reducing market barriers are necessarily subordinate to the Commission's *legal obligation* to ensure that a utility pays a QF no more than its avoided costs.[2] In this case, the evidence demonstrates that 15-year fixed price contracts do not result in customer indifference,[3] which is directly contrary to the avoided cost requirement in PURPA.[4] While a three-year contract term may result in less favorable (but not impossible) financing conditions for QF

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[1] *Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584 at 16, 19 (May 13, 2005).

[2] *Indep. Energy Producers Ass'n v. California Pub. Utilities Comm'n*, 36 F.3d 848, 858 (9th Cir. 1994) (PURPA requires that customers remain indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives); Order No. 05-584 at 45 ("In balancing the goals of facilitating QF contracts while sufficiently protecting ratepayers, we recognize that the primary aim is to ensure that *ratepayers remain indifferent* to the source of power that serves them.") (emphasis added).

[3] PAC/100, Griswold/29; PAC/200, Griswold/10, 12.

[4] 16 U.S.C. §§ 824a-3(b), (d); ORS 758.525(2).

developers, such a result is necessary to satisfy the Commission's obligation to protect customers.

The record also demonstrates that negotiating a non-standard contract is no longer a market barrier—developers both in Oregon and in other states have successfully negotiated PURPA contracts that included more accurate negotiated pricing.[5] Therefore, the proposed 100 kilowatt (kW) standard contract eligibility cap satisfies both the legal requirement of accurate pricing and the policy goal of reducing market barriers.

Importantly, PacifiCorp's d/b/a Pacific Power (PacifiCorp or Company) proposals to lower the eligibility cap and reduce the contract term are designed to work in tandem and one should not be viewed as a substitute for the other. Each recommendation addresses a different concern—negotiated contracts result in more reliable avoided cost prices based on current conditions, but the reliance on 15-year forecasts renders them inherently speculative. Indeed, both the Company's standard and negotiated prices rely, to a large extent, on the same forecasts. Thus, reducing the eligibility cap without also reducing the contract term is only a partial solution that would nevertheless leave customers exposed to significant risk of harm.

II. ARGUMENT

A. QF Development Can Continue with a Three-Year Contract Term.

Sierra Club and the Renewable Energy Coalition (Coalition) argue that a reduced contract term will make it "practically impossible" for QFs to be developed.[6] To support this claim, they point to the relatively small amount of QF development on Idaho Power

[5] *See e.g.* PAC/101, Griswold/2; Post-Hearing Opening Brief of the Community Renewable Energy Association at 4 (acknowledging that QFs in Idaho and Utah successfully negotiate contracts).

[6] Sierra Club's Opening Brief at 3.

Company's (Idaho Power) system when contract terms were five years between 1996 and 2001.[7] These parties' superficial analysis is unpersuasive, however, because it ignores other market conditions that limited QF development during that time. In particular, avoided cost prices during this period were between $14.20 per megawatt-hour (MWh) and $17.60 per MWh for standard contracts,[8] as compared to PacifiCorp's current price of roughly $45 per MWh for solar QFs.[9]

Sierra Club and the Coalition also point to PacifiCorp's Washington jurisdiction as further evidence that a contract term of five years will limit QF development.[10] Again, this argument ignores other relevant factors that have limited QF development in Washington, such as the Company's lower avoided cost prices in that jurisdiction.[11]

Finally, the Coalition incorrectly claims that PacifiCorp has presented no evidence supporting its view that a three-year contract will allow QFs to obtain financing.[12] On the contrary, PacifiCorp presented evidence that new financing mechanisms within the industry have shortened the contract term necessary for a project to be built.[13] The Oregon Department of Energy also submitted testimony that QF developers may be able to access

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[7] Sierra Club's Opening Brief at 2-3; Renewable Energy Coalition Opening Brief at 18.
[8] Staff Prehearing Memorandum, Attachment A at 3. These prices were taken from the Staff Memorandum approving an avoided cost price change for Portland General Electric Company in 1996. The Commission also lowered the contract term to five years. The price range resulted from the on and off-peak prices, as well as, the seasonal price differences.
[9] Sierra Club's Opening Brief at 3-4.
[10] Sierra Club's Opening Brief at 3; Renewable Energy Coalition Opening Brief at 17.
[11] *See WUTC v. PacifiCorp*, Docket UE-130043, Order 05 ¶ 113 (Dec. 4, 2013) (observing Oregon's avoided cost prices were significantly higher than Washington's).
[12] Renewable Energy Coalition Opening Brief at 10.
[13] Tr. 76:1-77:1 (Griswold).

financing through successive three-year contracts, although financing may be more expensive as the QF assumes price risk that is currently borne by customers.[14]

B. Oregon Law does Not Require 20-Year Fixed Price Contracts.

The Company's Opening Brief rebutted parties' argument that ORS 758.525 mandates 20-year fixed price contracts and the Company will not repeat those arguments here.[15] The Coalition, however, offers an additional argument in its opening brief, claiming that the avoided cost prices that a utility files pursuant to ORS 758.525(1) "are not just illustrative prices for forecasting purposes, but the prices that a QF has the legal right to purchase power at."[16] The Coalition's argument, however, has been rejected by the Court of Appeals, which has concluded that the avoided cost prices filed pursuant to ORS 758.525(1) are "not binding" and that a QF is not entitled to those "estimates."[17]

C. Oregon QFs are Capable of Negotiating Non-Standard Contracts.

The Community Renewable Energy Association (CREA) argues that the Commission should conclude that no Oregon QFs will be able to negotiate fair terms and rates with PacifiCorp because there are very few Oregon QFs above the current eligibility cap.[18] CREA attributes this limited QF development to the fact that utilities in Oregon are not assured of

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[14] ODOE/100, Hobbs/2-3; PAC/200, Griswold/8-9.

[15] PacifiCorp's Opening Brief at 9-19.

[16] Renewable Energy Coalition Opening Brief at 5.

[17] *Snow Mountain Pine Co. v. Maudlin,* 84 Or App 590, 600-01 (1987). The court addressed the requirements of ORS 758.525 to determine the avoided cost prices for a negotiated QF contract. The circuit court found that the QF was entitled to the avoided cost prices on file with the Commission pursuant to ORS 758.525(1) at the time the QF created a legally enforceable obligation. The Court of Appeals reversed, finding that, as required by the Commission's rules and policies in effect at the time, a QF that is ineligible for a standard contract is entitled to a utility's "actual avoided costs," which must be "projected" from the "forecasts" filed under ORS 758.525(1) based on the characteristics of the particular QF. While the case did not focus on the term of the QF contract, the court explicitly undermined the Coalition's argument that the statute entitles QFs to the avoided cost prices filed pursuant to ORS 758.525(1).

[18] Post-Hearing Opening Brief of the Community Renewable Energy Association at 3.

cost recovery and therefore do not negotiate in good faith.[19] The evidence does not support CREA's claims.

First, CREA presented no evidence that the lack of guaranteed cost recovery is actually a barrier to negotiated contracts. CREA's speculation on this point provides no evidentiary basis to support its factual claim.

Second, concerns over the negotiation process are unfounded given that negotiations will be governed by the Commissions' parameters and guidelines, which were adopted specifically to overcome barriers associated with non-standard QF contracts.[20]

Third, while the Commission has not assured recovery of QF contract costs, it has made clear that the possibility of a disallowance is unlikely.[21] According to the Commission, a utility's lack of discretion regarding QF transactions favors the "likelihood of a QF contract being deemed prudent."[22]

Fourth, QFs in Oregon have successfully negotiated non-standard contracts. In fact, during the pendency of docket UM 1725, Idaho Power successfully negotiated nine solar QF contracts in Oregon.[23] These contracts were all negotiated without any assurance of cost recovery by the utility.

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[19] Post-Hearing Opening Brief of the Community Renewable Energy Association at 4.
[20] Order No. 05-584 at 11, 17.
[21] Order No. 05-584 at 56 ("The good faith fulfillment of this [PURPA] obligation is the best means for a utility to mitigate the risk of prudency disallowances associated with QF contracts.").
[22] Order No. 05-584 at 56.
[23] *Re Applications to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination*, Docket No. UM 1725, Idaho Power/400, Allphin/8-9. In accordance with OAR 860-001-0460(1)(d), the Company requests that the Commission take official notice of this evidence.

Fifth, based on the record in this case, Staff and PacifiCorp have persuasively argued that the lack of QFs above the eligibility cap is the result of disaggregation of resources, not market barriers to contract negotiation.[24]

D. QF Development Lacks the Customer Protections Provided by the Commission-Approved Planning and Competitive Bidding Processes.

Sierra Club argues that QF and utility resources "have similar risks and benefits from the standpoint of the ratepayers."[25] This is untrue. In fact, QFs present substantially greater risks than non-QF resources because QF contracts are executed without any consideration of resource need or whether the QF is the least cost resource.[26]

Long-term non-QF resources are acquired only after there is an identified need for the resource and after the resource is subjected to scrutiny in an Integrated Resource Planning (IRP) docket.[27] Least-cost planning ensures that PacifiCorp's resource portfolio provides an "adequate and reliable supply of energy at the least cost to the utility and its customers consistent with the public interest."[28] Before selecting a particular resource, PacifiCorp must compare all available alternatives on a fair and comparable basis, consider more than just the internal costs to the utility, and include extensive participation by the public and the Commission "prior to the making of the resource decisions rather than after the fact."[29] The Commission found that this approach to resource acquisition is "necessary and consistent

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[24] *See e.g.* Staff Opening Brief at 4-5.
[25] Sierra Club's Opening Brief at 6.
[26] PAC/100, Griswold/24-26.
[27] *See e.g.* PAC/200, Griswold/14.
[28] *Re Least-Cost Planning for Resource* Acquisition, Docket No. UM 180, Order No. 89-507, 1989 WL 418453 at *5 (Apr. 20, 1989).
[29] *Id.*

with its statutory obligation to represent customers and the public generally . . . and to obtain for customers and the public adequate service at fair and reasonable rates."[30]

Further, once a resource is identified in the Company's IRP, it is acquired through a competitive bidding process intended to minimize long-term energy costs.[31] The process includes extensive Commission oversight and requires the appointment of an independent evaluator to ensure that all bids, whether submitted by the utility or by an independent power producer, are treated fairly.[32] A PURPA transaction is subject to neither the IRP nor competitive bidding processes and therefore imposes greater risk on customers.

E. This Case is about Ensuring Compliance with PURPA, not about Eliminating Utility Competition.

The Coalition claims that this case is nothing more than PacifiCorp's attempt to eliminate its competition so that it can build renewable resources itself.[33] To the contrary, PacifiCorp's requests here are intended to protect customers by minimizing customer exposure to unreasonable price risk and better ensure the accuracy of the Company's avoided cost prices. Further, the Coalition's implication that the Company will have unfettered discretion to build its own renewable resources in lieu of QF transactions improperly discounts the Commission's work to develop a competitive bidding process that ensures that the least cost resource is built, regardless of ownership.

F. Renewing QFs are not Entitled to Capacity Payments.

The Coalition proposes that existing QFs should be paid for capacity when they renew their contract, even if the utility is resource sufficient and has no need for the QF's

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[30] *Id.*

[31] *Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 06-446 at 2 (Aug. 10, 2006).

[32] Order No. 06-446 at 6.

[33] Renewable Energy Coalition Opening Brief at 2.

capacity at the time of contract renewal.[34] This argument ignores the uncertainty inherent in QF development—there is no guarantee that a QF will renew their contract.[35] Thus, there is no basis for the Company to treat a renewing QF contract any different from a new one. In both cases, the QF should be paid the avoided cost prices calculated at the time the contract is executed. If the Company has no demand for capacity at that time, then the QF should not receive a capacity payment.

III. CONCLUSION

The Commission should adopt both of PacifiCorp's proposals in this case and reduce the contract term for all QF contracts to three years and lower the standard contract eligibility cap to 100 kW for wind and solar QFs. Granting this relief will better ensure that Oregon's implementation of PURPA results in customer indifference.

Respectfully submitted this 19th day of February, 2016.

Dustin Till
Senior Counsel
PacifiCorp d/b/a/ Pacific Power

[34] Renewable Energy Coalition Opening Brief at 19.
[35] PAC/200, Griswold/26.