ORDER NO. 16 337

ENTERED SEP 08 2016

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1610

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into Qualifying Facility Contract and Pricing.	ORDER

DISPOSITION: APPLICATIONS FOR RECONSIDERATION DENIED; MOTIONS TO STAY COMPLIANCE DENIED

I. INTRODUCTION

A. Procedural Background

On July 12, 2016, PacifiCorp, dba Pacific Power, and Portland General Electric Company (PGE) filed a joint application for reconsideration of Order No. 16-174, along with a joint motion for a limited compliance stay of the order. On the same day, Idaho Power Company also filed an application for reconsideration of Order No. 16-174, along with a compliance filing that the company asks we suspend.

On July 26, 2016, Commission Staff, the Community Renewable Energy Association (CREA), and Renewable Energy Coalition (REC) filed responses to both applications for reconsideration. Oregon Department of Energy (ODOE) filed a response to the joint application for reconsideration of PacifiCorp and PGE.

On July 27, 2016, the City of Portland filed comments on the joint application for reconsideration of PacifiCorp and PGE.[1] On August 2, 2016, PGE filed a motion to strike the comments. On August 11, 2016, the City of Portland filed a reply to PGE's motion. On August 15, 2016, the administrative law judge ruled that the City of Portland was an interested party and denied the motion to strike, noting it was unnecessary as the comments did not constitute evidence.

[1] The City of Portland, which is not a party to this proceeding, filed comments on the joint application for reconsideration of PacifiCorp and PGE. The administrative law judge denied PGE's motion to strike the comments, but noted that the comments did not constitute formal evidence or argument in the docket (ALJ Ruling on Motion to Strike (Aug 15, 2016).

B. Legal Standard for Reconsideration

ORS 756.561(1) authorizes a party to request reconsideration by the Commission of any order within sixty (60) days of service of that order. We may grant reconsideration "if sufficient reason therefore is made to appear." OAR 860-001-0720(3) provides that we may grant an application for rehearing or reconsideration if the applicant establishes one or more of the following grounds:

(a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;
(b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
(c) An error of law or fact in the order which is essential to the decision; or
(d) Good cause for further examination of a matter essential to the decision.

OAR 860-001-0720(2) requires the applicant for reconsideration to specify:

(a) The portion of the challenged order that the applicant contends is erroneous or incomplete;
(b) The portion of the record, laws, rules, or policy relied upon to support the application;
(c) The change in the order that the Commission is requested to make;
(d) How the applicant's requested change in the order will alter the outcome; and
(e) One or more of the grounds for rehearing or reconsideration in section (3) of this rule.

II. DISCUSSION

A. Modification to the Capacity Contribution

1. Parties' Positions

Although we had intended in our prior Order No. 14-058 to revise the methodology for calculating standard avoided cost prices to account for the reduced capacity contribution of different QF resources vis-à-vis the proxy resource, Idaho Power charges that our adoption of Staff's modification to the capacity contribution calculation in Order No. 16-174 actually increases, not decreases, the price the company will pay to a solar QF resource. Reminding that it warned of such an outcome, Idaho Power indicates that the standard avoided cost prices for solar QFs calculated according to Order No. 16-174 exceed the 100 percent contribution to peak of the natural gas-fired combined cycle combustion turbine (CCCT) proxy resource. Idaho Power points to the revised on-peak and off-peak avoided cost prices published in its compliance filing, and asserts that the revised price tables show that the on-peak price for a solar QF resource (assuming a 51.3 percent contribution of its capacity to peak load) substantially exceeds the corresponding

price for the baseload resource (assuming a 100 percent contribution of its capacity to peak load) in all applicable resource deficiency years. Idaho Power argues that "[t]he fact that a solar QF receives a higher avoided cost price despite a lower contribution to peak load is an unlawful impossibility with a proxy resource methodology, and is clearly not what was intended by the Commission's initial determination to have a more accurate reflection of wind and solar QF's actual contribution to peak."[2]

Staff retorts that Idaho Power inappropriately focuses on the hourly price instead of the total amount paid to solar QFs. What matters, Staff states, is that over the course of a year, the base load QF, with a much higher contribution to the utility's peak load than a solar QF, receives much more compensation than the solar resource (assuming no operational issues) notwithstanding that the hourly price for the solar QF may exceed the hourly price of the base load resource. Although Idaho Power may be dissatisfied with the capacity contribution adjustment, Staff asserts that the adjustment does not unfairly compensate solar QFs and is not unlawful. Staff also argues that Idaho Power fails to raise a new issue or fact that justifies reconsideration of the decision, relying instead on past arguments already made and rejected.

CREA and REC echo Staff's points. They observe that a request for reconsideration is not an opportunity to reargue prior losing positions. They also discredit Idaho Power's position that prices newly calculated in compliance with Order No. 16-174 demonstrate that solar QFs will be paid more than the proxy baseload resource. Since the prices are paid on a per MWh basis, which Idaho Power admits parenthetically in its application, the compensation for a solar QF's energy and capacity on an annual basis will be far less than received by a base load resource due to the fact that a solar QF will produce far fewer MWh. CREA and REC indicate that the Commission's focus has always been on adjusting annual QF compensation instead of volumetric rates.

2. Resolution

We find no error of fact or law upon which to reconsider our adoption of an adjusted avoided capacity contribution calculation for standard non-renewable avoided cost prices in Order No. 16-174. We do not find Idaho Power's calculations showing hourly prices for solar QFs higher than hourly prices for a proxy resource to be compelling. We agree with Staff, CREA, and REC that the appropriate focus is on the fairness of total avoided cost compensation paid over a year's time to solar QFs, which Idaho Power does not challenge.

B. Market Price Floor

1. Parties' Positions

PacifiCorp, PGE, and Idaho Power request that we reconsider the market price floor adopted for nonstandard avoided costs in Order No. 16-174. They argue that the market price floor is predicated on an error of law, and that good cause exists to reconsider its

[2] Idaho Power's Application for Reconsideration at 9.

adoption. PURPA requires utility customers to be indifferent to QF purchases, the utilities observe, and they contend the market price floor conflicts with this mandate. Each utility offers reasons why the market floor undermines its avoided cost pricing methodology.

In their joint application, PGE and PacifiCorp focus on the effect the floor will have on PacifiCorp. They argue that the market price floor will render the benefits of the PDDRR methodology moot when PacifiCorp is compelled to pay market prices to a QF but unable to avoid a market transaction. They argue the market price floor distorts the production dispatch model's accounting for transmission capacity in place of an assumption that QF energy always displaces market purchases or facilitates additional market sales. They also point to evidence submitted by PacifiCorp that shows "many times when the incremental cost of energy and capacity that would be incurred by a utility will be less than market, including times during the deficiency period."[3]

In addition, PGE and PacifiCorp assert that there will be instances when the market price floor may cause PGE to pay market-based prices to QFs higher than the company's avoided costs. They state that the market price floor will likely result in rates that are higher than avoided costs during deficiency periods as deficiency period avoided costs reflect the fully allocated costs of a natural gas or wind plant and are often lower than market prices.

Idaho Power also argues that the market price floor may cause its avoided cost prices to exceed its actual avoided costs. The company explains that, because the ICIRP model determines the highest cost displaceable resource during any hour that a QF is paid, a market price will by definition sometimes exceed actual avoided costs.

PGE and PacifiCorp also challenge our justification for adopting the market price floor, arguing that it's inappropriate to favor price certainty for QF developers over PURPA's legal requirement that customers pay no more than avoided costs for QF power. In any case, they observe that there was no evidence that was introduced on the record about the value of price certainty for QF developers.

Staff disagrees with the utilities' assertion that the imposition of market prices as a floor on prices paid to QFs is in conflict with PURPA. Staff points out that the use of market prices as a floor for avoided cost prices dates back to 2005 when we considered how to compensate QFs for energy and capacity during both sufficiency and deficiency periods. For resource sufficiency period prices, we required PGE and PacifiCorp to set sufficiency period avoided cost prices at market, Staff indicates, as we concluded that this methodology "embeds the value of incremental QF capacity in the total market-based avoided cost rate."[4] For resource deficiency periods, we required PGE and PacifiCorp to base avoided cost prices on the fixed and variable costs of a CCCT, an avoidable resource.[5]

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[3] Joint Motion at 5, citing Pac/1400, Dickman/7.
[4] *Id.*, quoting Order No. 05-584 at 27-28.
[5] Staff's Response to Joint Application at. 3, citing Order No. 05-584 at 27-28.

Staff contends that in arguing that market prices will overcompensate QFs when market prices exceed the utilities' costs to operate their generating resources, PGE and PacifiCorp overlook the fact that we do not allow utilities to base deficiency prices on the utility's cost of generation, but rather on the fixed and variable costs of the next avoidable resource. Staff argues that "[a] complaint that market prices may exceed the costs of their displaceable generation resources is irrelevant."[6] Staff adds that we adopted the PDDRR methodology to facilitate PacifiCorp being able to accurately value energy and capacity on PacifiCorp's system by taking into account the unique characteristics of a particular QF, but imposed the market price floor to ensure that QFs always received compensation for both energy and capacity.

With regard to Idaho Power's assertion that market-based sufficiency period prices would overcompensate QFs when the ICIRP methodology indicates that the company could acquire energy more cheaply than at market, Staff responds that basing avoided cost prices on the utility's own variable costs would not compensate QFs for avoided capacity and demonstrates the need for the market price floor.

REC and CREA argue that if we reopen any element of Issue 7 decision, we must revisit the issue as a whole. Reminding that they opposed the use of computer models due to the cost to replicate and a resulting lack of transparency and predictability, REC and CREA assert that the market floor was adopted as a mitigating measure that cannot be readdressed on its own.

REC and CREA also undercut concerns raised by PacifiCorp and Idaho Power that market prices may be in excess of the rates that their computer models would produce in certain hours. REC and CREA point out that the market price floor is a floor for the overall avoided cost of both energy and capacity, whereas the computer model price is for only the avoided cost of energy. REC and CREA call attention to Idaho Power testimony indicating that the ICIRP method uses the AURORA model to calculate the avoided cost of energy with a separate value then added to the rate based on the fixed costs of a simple-cycle gas plant in order to compensate a QF for capacity.[7] Although PacifiCorp claims that "[t]here are many times when the incremental cost of energy *and capacity* that be incurred by a utility will be less than market, including times during the deficiency period," REC and CREA observe that PacifiCorp did not provide evidentiary support for this statement.[8] REC and CREA also challenge the utility's implicit assumption that each of the preferred methodologies will always produce "an exact and unassailable estimate of the actual avoided costs" such that use of any other rate must be unlawful.

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[6] *Id.* at 5.

[7] CREA and REC's Response, citing Idaho Power/200, Stokes/33-40, 41-44.

[8] *Id.*, n 3, quoting PacifiCorp and PGE's Reconsideration Application at 5 (citing PacifiCorp/1400, Dickman/7) (emphasis added).

2. Resolution

We acknowledge some ambiguity in the order regarding whether we intended the market price floor to apply during sufficiency and deficiency periods. Accordingly, we clarify that we intend the market price floor to be the minimum avoided costs price during sufficiency periods only.

We reaffirm that we find the market price to be the appropriate floor for the minimum avoided cost rate paid during a sufficiency period, even if the incremental cost of generation is lower than the market price because absent transmission constraints, a utility may sell the QF generation on the market. In addition, we assert that the market price includes an incremental QF capacity value. We acknowledge arguments that certain transmission constraints *could* exist that prevent otherwise economic market sales of low cost energy, but note that PacifiCorp previously indicated that such transmission conditions do not exist in Oregon.[9] We encourage the utilities to notify us when such conditions actually exist in Oregon.

C. Motions to Stay

1. Parties' Positions

PGE and PacifiCorp made compliance filings as required by Order No. 16-174 concurrent with the joint application for reconsideration. The compliance filings implement actions required under Order No. 16-174, including the market price floor. Under OAR 860-001-0700(1), PGE and PacifiCorp ask that we stay each company's implementation of the market price floor until we resolve the joint application for reconsideration. As pricing is fixed for 15 years in contracts signed under PURPA, PGE and PacifiCorp assert that good cause exists to stay compliance with the market price floor direction in Order No. 16-174 until we complete our review.

Idaho Power also made a compliance filing pursuant to Order No. 16-174 concurrent with an application for reconsideration of the order. Idaho Power asks that we suspend its entire compliance filing pending resolution of the company's application for reconsideration.

Although the Commission is not fully subject to the Administrative Procedures Act (APA), Staff indicates that we decided to apply the APA standard for granting a stay in Order No. 01-942.[10] Staff states that ORS 183.482(3) sets forth this standard in part, as follows:

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[9] *See* PacifiCorp's Closing Brief at 16 (Oct 13, 2015).

[10] Staff's Response to Idaho Power Company's Application for Reconsideration at 2, citing *In re Portland General Electric Company* (Docket No. UE 115), Order No. 01-842.

(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

Staff argues that there is no colorable claim of error that justifies a stay of the utilities' compliance filings for all of the reasons offered why reconsideration is not justified. Staff further asserts that compliance with Order No. 16-174 will not cause irreparable harm to any utility.

2. Resolution

We deny the joint motion by PGE and PacifiCorp to stay each of their compliance filings as to implementation of the market price floor required by Order No. 16-174. We also deny the motion by Idaho Power to suspend its entire compliance filing. As we have already denied the underlying applications for reconsideration, the motions for stays are moot. We do not find a colorable claim of error in Order No. 16-174 that justifies a stay of compliance, and we do not conclude that compliance will result in irreparable injury to any petitioner.

III. ORDER

IT IS ORDERED that:

1. PacifiCorp, dba Pacific Power, and Portland General Electric Company's joint application for reconsideration of Order No. 16-174 is denied.

2. PacifiCorp, dba Pacific Power, and Portland General Electric Company's joint motion to stay compliance with Order No. 16-174 is denied.

3. Idaho Power Company's application for reconsideration of Order No. 16-174 is denied.

4. Idaho Power Company's motion to stay compliance with Order No. 16-174 is denied.

Made, entered, and effective SEP 08 2016.

John Savage
Commissioner

Steve Bloom
Commissioner

PUBLIC UTILITY COMMISSION OF OREGON

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.