

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1442

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON

Investigation to Determine if PACIFIC POWER's Rate  
Revision Is Consistent With the Methodologies and  
Calculations Required by Order No. 05-584.

ORDER

**DISPOSITION: MOTION FOR RECONSIDERATION/CLARIFICATION  
DENIED**

On October 6, 2009, the Industrial Customers of Northwest Utilities, Biomass One, Co-Gen II LLC, the Community Renewable Energy Association, and the Renewable Energy Coalition (Joint Applicants) filed an application seeking reconsideration or, alternatively, clarification, regarding the scope and schedule for this investigation. On October 15, 2009, PacifiCorp, dba as Pacific Power (Pacific Power) and the Staff of the Public Utility Commission of Oregon (Staff) filed separate responses opposing the application. On the same date, the Oregon Department of Energy (ODOE) filed a response supporting the motion.

The dispute centers on the scope of this investigation. As the caption above describes, this investigation was opened to determine whether Pacific Power's new avoided cost filing is consistent with the methodologies and calculations required by prior Commission order. The Joint Applicants contend that this scope is too limiting. They argue that the Commission must allow a full exploration of all issues related to Pacific Power's avoided cost filing, including a complete review of the methodology used to calculate the avoided costs in order to ensure they are fair, just, and reasonable.

For the reasons set forth below, we deny the Joint Applicants' application and affirm the previously established scope and schedule for this investigation.

**Background**

As part of our ongoing evaluation of the policies and procedures used to implement the Public Utility Regulatory Policies Act (PURPA), we opened docket UM 1129 to investigate the availability of standard rates and the terms and conditions of contracts for purchases of electricity

from qualifying facilities (QFs). That lengthy investigation led to our adoption of a set of comprehensive policies and procedures to govern electric utility purchases from QFs.<sup>1</sup> Among other things, we revised the methodology for calculating utility avoided costs. This methodology requires a utility to use a natural gas fired plant as the proxy resource during resource deficiency periods, and a market-based energy and capacity payment during resource sufficiency periods.<sup>2</sup>

Subsequently, Pacific Power updated its avoided costs through filings made in 2005 and 2007. In both filings, Pacific Power utilized the methodology for calculating avoided costs as set forth in Order No. 05-584.

On July 9, 2009, Pacific Power filed Advice No. 09-012, revising rates for avoided cost purchases from QFs of 10,000 kW or less. Due to declines in both the wholesale electricity and natural gas market prices, the updated costs are significantly lower during both the resource sufficiency and resource deficiency periods. Several parties, including some that comprise the Joint Applicants, expressed concern about the proposed new, lower avoided cost rates and requested the Public Utility Commission of Oregon (Commission) conduct an investigation before allowing them to go into effect.

Our Staff reviewed Pacific Power's filing and reported that "the new avoided cost rates were derived in accordance with the requirements of OAR 860-029-0080 and are consistent with the methodology adopted by the Commission in orders issued during the various phases of Docket UM 1129."<sup>3</sup> Staff recommended the new rates be allowed to go into effect, and, in response to concerns from the QF community, that the Commission open an expedited investigation limited to whether the filing is compliant with Order No. 05-584.

At a September 8, 2009, Public Meeting, we adopted Staff's recommendation. In so doing, we expressly clarified that the investigation would "be limited to the issue of whether the company's avoided costs were calculated in compliance with the methodologies adopted by the Commission in Docket UM 1129." We also opened docket UM 1443 to similarly investigate the avoided cost filing made by Portland General Electric Company (PGE).

On September 16, 2009, an Administrative Law Judge (ALJ) adopted a procedural schedule for this docket. In response to arguments that the scope of the docket should be expanded, the ALJ affirmed our prior conclusion and expressly ruled that:

The Public Utility Commission of Oregon (Commission) opened these investigations to determine whether the avoided cost filings made by PacifiCorp, dba Pacific Power (Pacific Power) and Portland General Electric (PGE) are consistent with the methodologies and calculations required by Order No. 05-584. The scope of this proceeding is limited to those matters, and will not include the examination of the underlying methodologies adopted in Order No. 05-584.

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<sup>1</sup> Order No. 05-584.

<sup>2</sup> *Id.* at 27-29.

<sup>3</sup> Staff Report dated September 3, 2009, at 3.

The Joint Applicants now seek reconsideration or clarification as to the scope of this docket.

### Discussion

The Joint Applicants raise one legal and two policy arguments in support of their request. First, they equate avoided cost “rates” to “rates” generally charged by utilities, and argue that, under ORS 757.210, the Commission is required to conduct a full investigation to determine whether the avoided cost rates are “fair, just, and reasonable.” The Joint Applicants explain that we cannot simply defer to past methodologies used to set previous costs, but rather must evaluate Pacific Power’s costs to determine whether the tariffs reflect the utility’s actual avoided costs.

The Joint Applicants’ reliance on ORS 757.210 is misplaced. That statute is part of the statutory framework established for the review and approval of rates *charged* by utilities for electric service. That framework requires every utility to file schedules that show “all rates, toll, and charges which it has established \* \* \* for any service performed by it within the state[.]”<sup>4</sup> Once filed, the Commission may, on its own motion or upon written complaint, conduct an investigation to determine whether the rate is just and reasonable.<sup>5</sup> A rate for service is just and reasonable if it provides adequate revenue both for operating expenses and capital costs of the utility.<sup>6</sup>

ORS 757.210 does not apply to the review and approval of rates *paid* by utilities to QFs, which is governed by the separate statutory framework set forth in ORS 758.505 to 758.555. Under these provisions, electric utilities are required to update their avoided costs at least every two years.<sup>7</sup> Although the Commission must review and approve the filings, the legislature has not mandated an investigation or hearing to determine the reasonableness of those rates. Rather, we are charged with the obligation to ensure that rates paid to QFs are just and reasonable under the overarching goals of PURPA. The rates must be sufficient to encourage the production of energy, which requires the price to be not less than the utility’s avoided costs.<sup>8</sup>

As part of our responsibility to provide incentives for QF development, we have adopted a process to provide predictability in avoided cost pricing in order to allow a potential developer or investor to easily evaluate the economic feasibility of a project. That process uses recurring, generic investigations to determine what methodologies should be used to most accurately value a utility’s avoided costs. Our Order No. 05-584 was the culmination of one such comprehensive and lengthy investigation docketed as UM 1129. We then require the utilities to use these adopted methodologies when updating their respective avoided cost tariffs, and we review those filings for compliance with the approved methodologies. This process helps ensure that avoided costs are just and reasonable to the QF and the ratepayers of the public

<sup>4</sup> ORS 757.205.

<sup>5</sup> ORS 757.210(1)(a).

<sup>6</sup> ORS 756.040(1).

<sup>7</sup> ORS 758.525(1).

<sup>8</sup> See OTECC v. Co-Gen, 168 Or App 466, 470, 7 P3d 594 (2000).

utility, and provides certainty to developers by allowing an expeditious review and updates of avoided cost rates.

Contrary to the Joint Applicants' assertion, there is no applicable statutory provision requiring the Commission to conduct a full investigation of all potential issues whenever a utility updates its avoided costs. We may lawfully review and approve such filings through the process adopted here that is strictly limited to issues of compliance.

Second, the Joint Applicants contend the Commission should fully review Pacific Power's filing for reasons of public policy. They contend that it is preferable to review all issues regarding the accuracy of Pacific Power's avoided costs in a single proceeding, and that all relevant issues should be "consolidated and addressed in the same proceeding to ensure that the final order takes a consistent and holistic approach to PacifiCorp's avoided cost rates."<sup>9</sup> ODOE also believes the Commission should conduct a broader investigation "because it would allow better assessment of the Avoided-Cost decision-making methodology and better serve the interest of current Qualifying Facilities ("QF") and potential renewable QFs that intend to invest in renewable generation resources."<sup>10</sup>

We are not persuaded that current and potential QFs would be well served by expanding this investigation into a reevaluation of issues we addressed in Order No. 05-584. As discussed above, one of our primary goals in implementing PURPA has been the adoption of policies and rules to promote QF development through accurate and timely price information about a utility's avoided costs. Re-litigating the issues decided in UM 1129 would frustrate this goal, as it could potentially result in a lengthy, highly adversarial proceeding that would only cause uncertainty of QF rates.

Rather, we adhere to the process outlined above, whereby avoided cost methodologies are examined in recurring generic investigations and periodic utility updates are reviewed for compliance with those methodologies. Accordingly, we will use this proceeding to determine whether the avoided cost filings made by Pacific Power are consistent with the methodologies adopted in Order No. 05-584. We will use other proceedings, such as the pending investigation into resource sufficiency, docket UM 1396, to address whether the approved methodologies should be modified to more accurately value a utility's avoided costs.

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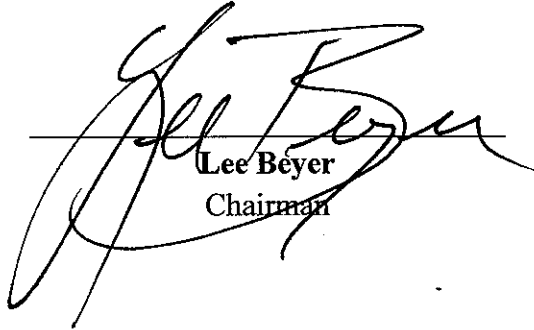
<sup>9</sup> Application for Reconsideration/Clarification at 10.

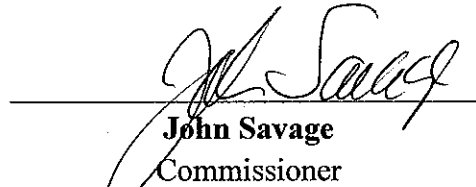
<sup>10</sup> ODOE's Comments at 1.

**ORDER**

IT IS ORDERED that the application for reconsideration or clarification, filed by Industrial Customers of Northwest Utilities, Biomass One, Co-Gen II LLC, the Community Renewable Energy Association, and the Renewable Energy Coalition, is denied.

Made, entered, and effective OCT 28 2009.

  
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**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
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**Ray Baum**  
Commissioner

