

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1396

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation into determination of
resource sufficiency, pursuant to Order
No. 06-538.

ORDER

DISPOSITION: POLICIES ADOPTED

I. BACKGROUND

In Docket UM 1129, the Public Utility Commission of Oregon (Commission) investigated a number of issues relating to electric utility purchases from Qualifying Facilities (QFs) under the Public Utility Regulatory Policy Act of 1978 (PURPA). In Order No. 06-538, the Commission evaluated the compliance filings by the utilities regarding standard power purchase contracts filed pursuant to Order No. 05-584, rendered earlier in that same docket.

In Order No. 06-538 the Commission addressed general issues and questions raised regarding the compliance filings. Among the matters considered was the manner in which the calculation of a utility's avoided costs should reflect the utility's resource position. We noted:

We did not, however, address the issue of *when* a utility should be considered to be resource deficient. Rather, parties addressed whether the calculation of avoided costs would reflect whether a utility is considered to be resource deficient or sufficient. Consequently, we deem all of the questions raised * * * as beyond the scope of compliance, and decline to further address them or resolve them at this time. In the near future, however, we anticipate opening a new docket to consider these issues (emphasis in original)¹.

¹ Order No. 06-538 at 54.

The Commission opened this docket to consider those issues.

II. PROCEDURAL HISTORY

This matter was initiated by the Commission on October 23, 2008. A prehearing conference was held on November 19, 2008. By ruling dated March 3, 2009, the Administrative Law Judge (ALJ) adopted an issues list proposed by the Staff of the Commission (Staff).

Parties filed direct testimony on April 13, 2009. Parties filing testimony included Staff, Portland General Electric Company (PGE), PacifiCorp, dba Pacific Power (Pacific Power), and the Industrial Customers of Northwest Utilities (ICNU). Idaho Power Company (Idaho Power) submitted a letter stating that it would not file initial testimony, but reserved the right to file reply testimony.

Reply testimony was filed by Staff, PGE, Pacific Power, and ICNU. Idaho Power did not file reply testimony.

Prior to hearing, each of the active parties waived cross-examination of any witnesses, and the prefiled testimony was received as evidence. ICNU also requested and received permission to supplement the record with data request responses from the utilities. Opening briefs were filed by Staff, PGE, Pacific Power, IPCO, ICNU and the Community Renewable Energy Association (CREA). Reply briefs were filed by PGE, Pacific Power and ICNU.

By administrative law judge (ALJ) ruling dated September 29, 2009, the matter was reopened for comments regarding a proposed Commission decision outline that would establish a new framework for the determination of resource sufficiency. Initial comments were filed by Pacific Power/Idaho Power (jointly); Staff; PGE; Biomass One; Renewable Energy Coalition (REC); and ICNU. Reply Comments were filed by Pacific Power/Idaho Power; REC; ICNU; PGE; and CREA.

By ALJ ruling dated January 6, 2010, the matter was reopened for comments on a modified Commission proposed decision framework. Besides asking the parties to comment on the broad framework, the Commission invited parties to address a recommendation made by ICNU in earlier comments.

Comments were filed by Staff, PGE/Pacific Power/IPCO (filing together as the "Joint Utilities"), ICNU, REC, and the Energy Trust of Oregon (Energy Trust).

III. PARTIES' POSITIONS

As noted, parties were given the opportunity to file three rounds of testimony or comments in this proceeding. We focus our attention on the last filing,

in which the parties were directed to respond to our revised decision framework. We begin our discussion by setting out that revised framework, followed by a summary of the parties' comments, and then turn to our resolution.

A. Revised Framework

The revised framework circulated to the parties was as follows:

- Utilities shall file their avoided costs every two years and, also, 30 days after an Integrated Resource Plan (IRP) order is issued (same as today).
- The Commission will allow updates at other times if the proponent can show that significant changes in avoided costs have occurred. Changes in factors affecting avoided costs (such as new market price forecasts or revised new resource dates) are not significant just because they are included in a new IRP filing.
- For both two-year and post-IRP filings, the start date of the first “major resource acquisition” in the action plan of the most recent acknowledged IRP demarcates the resource “sufficiency” and “deficiency” periods.
 - A “major resource” is defined as it is in the competitive bidding rules. For two-year filings, the utility may seek acknowledgement of an updated action plan.
 - Renewable resource acquisitions may be major resource acquisitions for purposes of determining the avoided costs for a renewable resource QF eligible under the Renewable Portfolio Standard (RPS).
 - For partially acknowledged plans or acknowledged plans with a range of on-line years for the next major resource acquisition, the Commission will indicate how the utility shall determine avoided costs.
- For resource sufficiency periods, avoided costs will be based on appropriate wholesale market price forecasts.
- For resource deficiency periods, avoided costs will be based on one of the following:
 - For a proposed renewable QF (eligible under the RPS) in which the developer will cede RECs² over to the utility, the proposed QF may choose an avoided cost stream based on the avoided cost of the major renewable acquisition.

² renewable energy certificates or credits

- When the major avoidable resource is a Gas CCCT, all QFs may choose an avoided cost stream based on the cost of the Gas CCCT.³
 - If a renewable QF chooses avoided costs based on the utility's next major renewable resource acquisition, the deficiency date and resource costs used in the calculation must be based on that major renewable resource acquisition; conversely, if the renewable QF chooses avoided costs based on an avoidable Gas CCCT, the deficiency date and resource costs used must be based on that Gas CCCT.
- For two-year filings, market prices and generation costs may be updated. The start date for the resource deficiency period shall not be updated unless the utility receives acknowledgement of an updated action plan.

B. Party Comments

As noted above, comments were filed by Staff, PGE/Pacific Power/Idaho Power (Joint Utilities), ICNU, REC, and the Energy Trust of Oregon (Energy Trust).

1. Staff

Staff supports the proposed decision framework, and “looks forward” to working with all parties to clarify certain issues. Staff agrees that the determination of resource sufficiency/deficiency should be based on the most recently acknowledged IRP action plan.

Staff proposes that the Commission define a utility's “Renewable Deficient Period” as starting at the point in time when a utility's action plan includes the acquisition of renewable resources or unbundled renewable energy credits. Staff agrees with ICNU's view that a utility is renewable deficient if the Action Plan calls for the acquisition of renewable resources or credits anywhere in a multi-state utility's system.

Staff proposes that the Commission define “Renewable Avoided Costs” as the incremental cost to an electric utility of renewable energy and energy credits that the utility would acquire for itself or purchase from another source, but for the purchase from the renewable QF.

Staff believes that the Commission should clarify that the renewable QF's choice is between the standard fossil fuel based avoided cost stream or the alternative renewable based avoided cost stream. The renewable QF would have a one-time opportunity to choose between these two alternatives at the time it enters into a long term power purchase agreement.

³ combined cycle combustion turbine

2. *The Joint Utilities*

The Joint Utilities recognize and appreciate that the revisions to the proposed decision framework reflect some of their earlier concerns. However, the Joint Utilities contend the revised framework does not resolve their most important concern – the Commission’s implementation of a new avoided cost framework without support of an evidentiary record and without clarification of unclear but fundamental concepts. They argue that the proposals should be explored in testimony, rather than litigated piecemeal in avoided cost dockets.

The Joint Utilities request that the Commission allow the parties an opportunity to develop the record on how to evaluate the resource sufficiency period where the utility’s IRP included a range of on-line years for its next major resource, or the IRP has been partially acknowledged. Similarly, they ask the Commission to clarify how it will calculate avoided costs of renewable resources if the utility includes a range of capital costs in its IRP.

The Joint Utilities also believe that elements of the proposed framework may violate the Public Utility Regulatory Policies Act (PURPA). Specifically, they argue that the proposal to allow renewable QFs to choose between two avoided cost payment streams likely violates PURPA.

The Joint Utilities contend that PURPA does not allow QFs to decide for themselves which type of alternative energy the utility will avoid by purchasing from the QF. They propose that the Commission forbid QFs to choose their avoided cost stream. If the Commission finds that renewable QFs (that cede REC to the utility) avoid different costs than QFs that do not cede REC, and that such a finding is consistent with PURPA, the QF ceding REC should be required to receive the avoided cost stream based on the cost of the next major renewable resource.

The Joint Utilities agree that the sufficiency/deficiency periods must be consistent with the calculation of avoided costs. They ask that the Commission clarify at what point a gas CCCT is no longer “avoidable.”

The Joint Utilities also do not object to ICNU’s proposal that for renewable QFs that would meet a renewable portfolio standard requirement in another state, the avoided cost should be based on the costs of the renewable resource.

The Joint Utilities support the Commission’s removal of the provisions that would have used gas peakers to determine avoided costs and resource sufficiency under some circumstances. They also support the new provision that allows for an update if “significant changes” in avoided costs have occurred. The Joint Utilities note, however, that the framework does not explain what factors would be eligible for consideration in such an analysis.

3. *ICNU*

ICNU supports the proposal that a renewable QF would have an option to choose an avoided cost payment stream based on the avoided cost of a major new renewable acquisition (if the QF cedes its RECs over to the utility). ICNU argues that the proposal makes practical sense and is consistent with the law.

ICNU reiterates its view that Oregon QFs should be eligible to sell renewable power and RECs to an Oregon utility to offset that utility's actual RPS needs, without regard to state boundaries.

ICNU states that the proposed framework clearly provides renewable QFs with the option to retain their RECs and sell power based on the sufficiency/deficiency date and resource costs of the gas CCCT – or to sell their RECs and obtain avoided cost pricing based on a new major renewable resource. According to ICNU, this option is consistent with Commission precedent and would not harm ratepayers.

ICNU again argues that the 100 MW threshold should not be applied for purposes of determining major renewable resources. ICNU cites Pacific Power's practice of deliberately sizing many of its renewable projects at less than 100 MW to avoid the Commission's competitive bidding rules. ICNU clarifies that it does not propose that the Commission modify its competitive bidding rules in this proceeding. Regardless of the size threshold used for competitive bidding, ICNU recommends that the Commission set the size threshold for major renewable plants at 40 MW for new plants, and at 15 MW for projects that are built at or adjacent to existing plants.

According to ICNU, the adoption of the proposed framework would worsen the problems associated with resource sufficiency/deficiency for non-renewable QFs. ICNU states that in the initial decision outline the Commission appeared to recognize that the utilities do not make only market purchases during the resource sufficiency period. If the Commission adopts the modified decision framework, ICNU proposes that the resource sufficiency price for all QFs be based on a weighted average of the resources the utility actually plans to build or acquire during the resource sufficiency time period.

Regarding avoided cost updates, ICNU states that the decision framework leaves a number of issues outstanding related to the procedural aspects of avoided cost update filing. ICNU recommends that the Commission address these and other implementation issues in a future proceeding.

4. *Renewable Energy Coalition (REC)*

REC agrees that there must be a thorough investigation of the details of implementation of an RPS based avoided cost option. REC urges the Commission

to establish general policy guidance for RPS based avoided costs, including a procedural outline. Any failure to provide such guidance will continue the present instability that results from multiple mechanisms and unpredictable timing of future changes to avoided cost prices. REC cites its own petition to open an investigation (docket UM 1457), which it intends to update, as a possible implementation phase of this proceeding.

REC supports ICNU's proposal that Oregon renewable QFs be allowed to use the avoided costs associated with utilities meeting RPS standards in other jurisdictions (state and federal).

REC urges the Commission to consider measures to prevent the utilities from "gaming" their major resource acquisitions by sizing their projects below the competitive bidding threshold. REC proposes that alternatives be addressed in the implementation phase of this proceeding.

5. *Energy Trust*

The Energy Trust supports the option of a renewable resource avoided-cost payment stream for renewable QFs. However, its support is conditional because the details of implementation are important. The Energy Trust cites several questions that it believes should be explored further. However, the Energy Trust suggests the Commission "make clear that it may delay implementation if national or regional policy changes create too much ambiguity or uncertainty while the parties are exploring these issues."⁴

Regarding ICNU's proposal that renewable QF payments not be limited to meeting only the Oregon RPS, the Energy Trust states that it supports renewable projects whose generation directly meets Oregon ratepayer needs, not those of other states. Energy Trust also states that costs should be tracked and allocated appropriately in such instances.

IV. DISCUSSION

A. Additional Proceedings

Several parties have requested that the Commission explore the various proposals through further testimony and in hearings. Although, as discussed below, the Commission will convene another phase of this proceeding, the Commission will not receive testimony in that phase of the proceeding from parties regarding the proposals made in this phase. In their last round of comments the parties had sufficient opportunity to raise issues and propose outcomes with respect to all identified issues.

⁴ Energy Trust's Opening Comments at 1-2.

B. Resource Sufficiency/Deficiency in IRP Context

As noted above, PGE, Pacific Power and Staff support the IRP process as the forum for resolving resource sufficiency issues. ICNU does not agree. CREA, in earlier filed comments, supports ICNU.

We agree that the IRP process is the appropriate venue for addressing resource sufficiency/deficiency issues because the IRP processes are conducted with extensive public review regarding the timing of the utility's loads and its consequent resource needs. We acknowledge, however, that further guidance is necessary to make the IRP process more workable for this purpose. We provide that guidance here.

Where the utility's acknowledged IRP shows a range of on-line years for a major resource, we find that the earliest date in the range will set the date for resource deficiency. By selecting the earliest date, the utility is provided a meaningful incentive to accurately predict the timing of its resource needs. If an earlier date than necessary were chosen, the utility would pay higher avoided costs during a resource sufficient period.

Where the utility's IRP and IRP action plan are partially acknowledged, the determination of the resource sufficiency/deficiency demarcation will be made on a case-by-case basis. Specifically, the utility will be directed to offer its own proposal for the demarcation of resource sufficiency and deficiency. Parties will be allowed to respond to the utility proposal. The Commission will then make the final determination.

C. Definition of Major Resource

We decline to modify the 100 MW standard for "major resources" in this phase of the proceeding. The issues raised by ICNU relate more to the process than the substance of resource planning and can be addressed on a case-by-case basis where they arise.

D. Avoided Cost Updates

With respect to avoided cost updates, we retain the current practice of the utilities filing their avoided costs every two years and, also, 30 days after an IRP order is issued. A utility may also propose to update its avoided costs at any time, based on a "significant change." In this decision, we will not define what constitutes a "significant change." The determination will be made on a case-by-case basis.

E. Further Proceedings

In this decision the Commission does not address a number of the key issues set forth in the revised framework and discussed by parties. This includes whether to allow renewable QF developers to choose among two avoided cost streams and determining the appropriate capital cost of renewable resources to be used where the acknowledged IRP shows a range of capital costs. The Commission will take up this and other outstanding issues in a further stage of this proceeding

This case has been conducted against the backdrop of Federal Energy Regulatory Commission ("FERC") proceedings wherein the FERC recently clarified the status of renewable resource development as a consideration in the derivation of avoided costs. In an order dated October 21, 2010, the FERC held that "where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement." (133 FERC 61,059, pp. 13-14) In the second phase of this proceeding, the Commission will consider the implications of the FERC's holding for the issues identified for that phase.

The issues to be addressed in the next phase of these proceedings are stated in Appendix A to this order. The Commission ALJ shall set a prehearing conference not later than 30 days after the date of this decision.

V. ORDER

IT IS ORDERED that

- 1. The determination of resource sufficiency for Portland General Electric Company and PacifiCorp, dba Pacific Power, for purposes of calculating avoided cost for payments to Qualifying Facilities will be based on in their respective Integrated Resource Planning proceedings, in accordance with guidance provided in this order.
- 2. The issues identified in Appendix A shall be addressed in the next phase of this proceeding.

Made, entered, and effective DEC 22 2010.



Ray Baum
 Chairman



John Savage
 Commissioner



Susan K. Ackerman
 Commissioner



I. Substantive Issues

- A. Should the Commission require that each utility determine its avoided cost for a renewable resource? If so, how should the Commission decide what renewable resource would be avoided and at what cost?
1. Should the IRP Action Plan be used to identify when a renewable resource acquisition would be avoided, or should a utility purchase of unbundled renewable energy credits signal the start of a renewable resource deficiency period?
 2. Should out-of-state renewable portfolio standards be taken into account when determining when a renewable resource can be avoided by a purchase from an Oregon QF?
 3. Should the renewable avoided cost be based on the estimated cost of the renewable resources identified in the IRP Action Plan, or should the Commission use a “proxy” resource approach similar to the current approach used by PGE and PacifiCorp for standard avoided costs?
 4. When should the renewable avoided cost stream reflect an avoided purchase of an unbundled renewable energy certificate?
- B. Should the Commission require that a renewable QF be able to choose among two avoided cost streams – the renewable avoided cost stream, and the non-renewable avoided cost stream?
- C. When is a planned resource acquisition avoidable?
1. If no irreversible commitment has been made to the project, is the project avoidable?
 2. What constitutes an irreversible commitment?

II. Procedural Issues

- A. Which of these issues should be the subject of evidentiary proceedings?
- B. Should the evidentiary proceedings be generic, or conducted on a utility-by-utility basis?