BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER THE PUBLIC UTILITY COMMISSION OF OREGON Investigation Into Qualifying Facility Contracting and Pricing	CASE NO. UM 1610 PHASE II COMMUNITY RENEWABLE ENERGY ASSOCIATION AND RENEWABLE ENERGY COALITION'S RESPONSE TO APPLICATIONS FOR RECONSIDERATION OF ORDER NO. 16-174 BY IDAHO POWER COMPANY, PORTLAND GENERAL ELECTRIC COMPANY, AND PACIFICORP

I. INTRODUCTION

The Community Renewable Energy Association ("CREA") and Renewable Energy Coalition ("REC") hereby respectfully submit to the Public Utility Commission of Oregon ("Commission" or "OPUC") this response to the applications for reconsideration of Order No. 16-174 (the "Order") filed by the three investor-owned utility parties, Idaho Power Company ("Idaho Power"), Portland General Electric Company ("PGE"), and PacifiCorp (collectively the "IOU Applicants"). The Order resolved nine distinct issues related to avoided cost rate-setting and contracting under the Commission's implementation of the Public Utility Regulatory Policies Act ("PURPA") and related state law. In the Order, the Commission actually resolved most of the issues in this phase of the proceeding in the favor of the IOU Applicants, and ruled against CREA, REC and other parties advocating on behalf of Oregon's qualifying facilities ("QF") on the majority of the issues.

Unsatisfied to lose any issues, however, the IOU Applicants collectively challenge two important rulings in favor of QFs: (1) the Commission's determination to finally correct (after a two-year delay) the "double discount" that Order No. 14-058 inadvertently created for capacity compensation to QFs; and (2) the Commission's determination to adopt a market-price floor in calculation of the non-standard avoided cost rates. As explained below, the IOU Applicants' reconsideration filings fail to meet the burden for reconsideration of a final OPUC order, and should therefore be denied. Furthermore, since there is no basis for reconsideration, the IOU Applicants' request to stay the Order should likewise be denied.

II. BACKGROUND

In the Order, the Commission addressed nine separate PURPA contracting and avoided cost rate issues. These issues included: greentag ownership during the last five years of a renewable rate contract; avoided transmission costs; the double discount for capacity payments to QFs; the proper forum to litigate avoided cost calculations; sufficiency period pricing; calculation of non-standard rates; formation of a legally enforceable obligation; and assignment of third-party transmission costs to QFs. In the Order, the Commission sided with the IOU Applicants on most of these issues. However, the IOU Applicants now seek to re-litigate two of the issues where the Commission did not rule completely in their favor.

A. Background on the Double Discount Issue

The first issue the IOU Applicants seek to re-litigate is the Commission's determination to correct the double discount for capacity payments to QFs. The double discount was an inadvertent result of the Commission's determination in Order No. 14-058 (at the IOU

Applicants' urging) to implement a more precise calculation of the capacity value of individual QF resource types in the standard avoided cost rate calculations.

Immediately after Order No. 14-058, multiple QF parties, including CREA, pointed out an obvious methodological error that would result in a double discount in the calculation of a QF's capacity contribution to peak ("CTP") under the new calculation method. *See Motion for Clarification and Application for Reconsideration by OneEnergy. Inc. and the Community Renewable Energy Association*, OPUC Docket No. UM 1610, at 2 (filed April 21, 2014) (asserting "the way in which the actual power purchase rates are calculated in Staff's exhibit results in a 'double discount' of the qualifying facility's capacity value and should be corrected to avoid paying QFs less than the full avoided costs."); *see also Obsidian Renewables LLC's Motion for Clarification*, OPUC Docket No. UM 1610 (filed April 24, 2014).

The Commission Staff immediately agreed with the QF parties that the Commission Staff's own calculation method adopted in Order No. 14-058 contained an unintended double discount to the QF capacity rates. *See Staff's Response to Requests for Clarification and Request for Reconsideration*, OPUC Docket No. UM 1610, at 3 (filed May 9, 2014) (stating: "Staff agrees with Obsidian and CREA that there appears to be a second and unintended discounting of the avoided capacity value in the design of the volumetric avoided cost prices"). The only legitimate point of debate was how best to correct the obvious error in a new rate design. *See id.* at 3 ("Staff recommends that the Commission allow parties to address this limited question regarding design of the volumetric avoided cost prices in the investigations currently open to address the utilities' recent filing to comply with Order No. 14-058").

Thus, reconsideration of the issue was granted by ruling dated June 10, 2014, which directed the parties to resolve the rate design question in workshops. *ALJ Ruling*, OPUC Docket No. UM 1610 (June 10, 2014). However, the IOU Applicants would not agree to an appropriate rate design during the ensuing workshops. Instead, the incorrectly calculated double-discount rates went into effect while all parties engaged in extended adjudication of the issue that lasted two years.

First, the Commission held a unique phase of this docket solely to address the capacity contribution issue. On November 4, 2014, seven parties, including each of the IOU Applicants, submitted opening testimony or comments on the double discount and the appropriate rate design. On November 19, 2014, those same seven parties submitted reply testimony. All parties, including the IOU Applicants, waived the right to cross examine witnesses at a live hearing. On December 18, 2014, eight parties, including the IOU Applicants, submitted post-hearing briefs on the issue. But the Commission did not rule on the issue at that time, and instead requested further testimony on the topic in Phase II. During Phase II, all parties, including the IOU Applicants, were given further opportunity to provide testimony and briefing on the issue. Each of the IOU Applicants filed additional testimony and briefing on the issue, and again waived cross examination on the issue.

Finally, the Order resolved the issue by determining, consistent with Staff's position since May 2014, that there was in fact an inadvertent double discount in the capacity value calculation of the avoided cost rates. Order at 8-11. The Order adopted Staff's correction to the error. *Id.* at 11.

B. Background on the Non-Standard Rate Calculations

The second issue the IOU Applicants seek to re-litigate is the calculation of the non-standard avoided cost rates. Their request on this point is surprising, since the IOU Applicants largely prevailed on this issue.

As the Order recounts, the Commission's long-standing policy for calculation of non-standard rates was that PacifiCorp and PGE would use the standard rates as a starting point for project-specific adjustments, while Idaho Power was permitted to use the computer-based modeling method approved by the Idaho Public Utilities Commission as refined by OPUC order. Order at 20. In Phase II, Idaho Power proposed to utilize a new modeling methodology not approved in docket UM 1129, PacifiCorp proposed to use yet another modeling methodology, and PGE proposed to have the right to use a computer model for certain, unspecified aspects of rate calculations. *Id.* at 21-22. QF parties, including CREA and REC, objected to use of computer models, arguing that computer models lack transparency and significantly increase the costs to negotiate a contract. *See id.* at 22. The Oregon Department of Energy ("ODOE") recommended that the market prices should be set as the floor for the hourly prices in the non-standard pricing methodologies. *Id.* at 21. ODOE explained that the market-price floor would keep ratepayers whole and provide an element of easily understood consistency across all three utilities. *Id.* REC and Staff supported ODOE's recommendation.

In the Order, the Commission sided with the IOU Applicants by allowing each of them to implement the modeling methodology they had requested – meaning there are now three different methods for calculating non-standard rates in Oregon, and each of those methods conceived by the utilities rely to some extent on a complex computer model. *Id.* at 23.[1] However, the Commission also adopted ODOE's recommendation to set the market prices as the floor in the calculation of non-standard rates. *Id.* at 23.

III. ARGUMENT

A. Reconsideration Is Not an Opportunity to Simply Re-Litigate Losing Arguments

Under Oregon law, "The commission may grant . . . a rehearing or reconsideration if sufficient reason therefor is made to appear." ORS 756.561(1). The Commission's administrative rules implementing the reconsideration provisions of the ORS 756.561 provide that the Commission may grant an application for reconsideration only if the applicant shows that there is: (a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order; (b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision; (c) An error of law or fact in the order that is essential to the decision; or (d) Good cause for further examination of an issue essential to the decision. OAR 860-001-0720(3). Thus, the burden on reconsideration requires a party to do more than simply re-argue the same position it lost in the underlying proceeding.

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1 It is not entirely clear from the Order if PGE is now entitled to utilize a computer model to make certain, unspecified pricing adjustments, as it had requested. *See* Order at 21-22. The prior order from docket UM 1129 was also ambiguous on whether computer models, or some other method, should be used for certain adjustments to non-standard rates. *See, e.g.*, Order No. 07-360 at 18 (prescribing no specific formula for the "reliability" adjustment but stating power cost models are well suited to estimating reliability adjustments). For purposes of this response, the Order did not reject use of computer models in calculation of PGE's non-standard rates, and QFs face the risk that PGE will attempt to use its proprietary model.

B. There Is No Basis to Reconsider the OPUC's Correction to the "Double Discount."

The Commission should reject the IOU Applicants' request to re-litigate the double discount to QFs' capacity payments. The incorrect double discount has been in place for two years now while the IOU Applicants have exhausted the opportunities to extensively debate the issue through the Commission's lengthy contested case process. During that time, QFs were deprived of the right to secure rates that represent a reasonable approximation of the full avoided costs. The IOU Applicants' present no new arguments in their reconsideration filings. They simply reargue, for at least the third time, why they disagree with Staff and the QF Parties on this issue. But their position is no more convincing now than it was previously.

The IOU Applicants first argue that PURPA prohibits payments in excess of avoided costs. *See Idaho Power's Reconsideration Application* at 4.[2] But that simplistic statement overlooks that federal and state law also mandate that the Commission must set the avoided cost rates at a reasonable estimate of the *full* avoided costs – not anything less. *Amer. Paper Institute, Inc. v. Amer. Elect. Power Serv. Corp.*, 461 U.S. 402, 412-17 (1983); ORS 758.525(2). Moreover, it is "the policy of the State of Oregon to . . . [i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens." ORS 758.515(3). The double discount ran directly counter to law and policy.

The IOU Applicants suggest that the Commission's order fails to respond to their arguments. But that is wrong. The Order's explanation of the "double discount" error appears in the discussion of Staff's position, as follows:

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[2] PacifiCorp and PGE rely entirely on Idaho Power's filing with regard to the double-discount issue.

> "Staff explains it erred in using a volumetric (per MWh) capacity price to represent the dollar value of capacity, rather than the cost itself, resulting in two discounts to capacity payments: one for a QF resource type's CTP, and another for the QF s on-peak [capacity factor ('CF')].
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> Staff contends that rather than layer two different adjustments on the capacity component of avoided cost prices, the Commission intended to replace the adjustment based on a QFs on-peak CF with an adjustment based on the CTP of the QF's resource type. Staff notes, in Order No. 14-058, the Commission explicitly stated that it expected capacity payments to wind QFs under the adjusted standard renewable avoided cost price stream would not change but that capacity payments to solar QFs selecting the standard renewable avoided cost price stream would increase. Yet, Staff points out, the calculations have resulted in capacity payments for both wind and solar far below what they would have received under the previous methodology, and not commensurate with the CTPs of the two QF resource types."

Id. at 8-9.

After reciting the rest of the parties' positions at length, including those of the IOU Applicants, the Order states that the Commission agrees, i.e. the Commission finds as a matter of fact, that there was an inadvertent error in the existing capacity rate calculation. Order at 8-11. The Commission stated:

> "We concur with Staff and other parties that [] the avoided capacity contribution calculation we adopted in Order No. 14-058 contains an inadvertent flaw with respect to solar QFs under both the standard renewable and standard non-renewable avoided cost price streams, and with respect to wind QFs under the standard non-renewable avoided cost price stream. Staff recommends an adjustment to fix the error and we adopt the adjusted calculation, as it is specified in Staff's testimony at Staff/500, Andrus/18-20 and Staff/500, Andrus/21, respectively, attached as Appendix A."

Order at 12. The record fully supports this finding through several rounds of testimony; indeed, any contrary finding would have been unsupported by sufficiently credible evidence. The Order even references, and attaches as Appendix A, the pages of the Staff testimony and exhibit containing detailed calculations of the new rate design. There are no flaws in the Order that need revision, and based on this record PURPA actually *requires* correction of the double discount to ensure QFs are compensated at the full avoided costs. *See* ORS 758.525(2) ("price for such a purchase shall not be less than the utility's avoided costs").

Idaho Power attempts to confuse the Commission by arguing that the new "prices" for solar QFs are higher than the "prices" for the proxy baseload resource. *Idaho Power's Reconsideration Application* at 7, 9. According Idaho Power, the solar prices in its compliance tariff are unlawful because they exceed the baseload prices. However, as Idaho Power concedes (albeit in a parenthetical), the solar prices only exceed the baseload prices "on a dollar per megawatt-hour basis." *Id.* at 9 (Idaho Power's parentheses removed from quotation). Idaho Power fails to mention that the overall "prices" paid to the solar QF over the course of any given year by ratepayers will be less than the overall "prices" paid to the proxy baseload resource over the same year because the solar resource has a much lower annual capacity factor, on both a peak and off-peak basis. In other words, the solar QF will have far less MWh per year over which it will be paid the slightly higher dollar-per-MWh rate – ultimately resulting in far less overall compensation for both its energy and capacity. This was fully explained in testimony and briefing from Staff and QF parties through multiple phases of this proceeding, which correctly focused on the overall compensation to the QF over the course of the year instead of Idaho Power's incorrect focus on volumetric rates. *See, e.g., Staff's Phase II Pre-hearing Brief* at 19-21.

The entire purpose of implementing resource-specific rates for capacity was to design a rate that will compensate the QF for the total amount of dollars it is entitled to receive over the course of a year based on its contribution-to-peak-capacity needs. The IOU Applicants' singular focus on the magnitude of *volumetric* rates that are necessary to accomplish that goal proves no errors of fact or law. In short, the IOU Applicants' fail to demonstrate that the overall compensation to any QF over the course of the year will exceed the value of that QF's assumed contribution-to-peak-capacity needs. The Order properly corrected the double discount, and reconsideration should be denied.

C. Reconsideration of the OPUC's Implementation of a Market-Price Floor In Non-Standard Rates Is Not Warranted.

The IOU Applicants proposal to re-litigate the non-standard rate methodology should also be denied. Notably, the IOU Applicants essentially prevailed on this issue because they were each allowed to utilize their own preferred method for calculating the non-standard rates. Thus, they do not actually seek to have the whole issue revisited; instead, they only seek revival of a narrow portion of it wherin the Commission implemented an important mitigating measure to ensure some transparency and predictability remains in the calculation of non-standard rates. If the Commission is inclined to revisit the issue at all, it would have to re-open the whole issue and reconsider whether use of the computer models is appropriate without the mitigating adjustment included in the Order.

At the outset in considering this issue, it is important to note that setting long-term avoided cost rates is an inexact science. In the exercise of developing a method to set long-term avoided cost rates, the Commission is tasked with adopting methods that produce the *full* avoided costs, *Amer. Paper Institute, Inc.,* 461 U.S. at 412-17; ORS 758.525(2), but that do not produce rates that exceed the avoided costs, 16 U.S.C. § 824a-3(b). The method must produce reasonable estimates of the avoided costs, and need not precisely match the real-time avoided costs. *See Small Power Prod. and Cogeneration Facilities; Regulations Implementing Sec. 210 of the Pub. Util. Reg. Pol. Act of 1978*, Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980) ("The Commission does not believe that the reference in the statute to incremental cost of alternative energy was intended to require a minute-by-minute evaluation of costs which would be checked against rates established in long term contracts between [QFs] and electric utilities.").

As noted above, QF parties opposed use of computer models due to the lack of transparency, cost, and unpredictability. It should be obvious that cost alone will allow the utility to engage in a one-sided rate calculation that will have the tendency to consistently underestimate the avoided costs. *See* Order at 22.

ODOE proposed a minor modification to the calculation of non-standard rates that would mitigate those issues to a certain extent, and the Order adopted that mitigation.

The Order fully explained ODOE's position as follows:

> "ODOE contends it is appropriate for the methodologies to differ across utilities *so long as one principle is applied*: the floor for non-standard avoided cost prices is the wholesale power price forecast used to set sufficiency period avoided cost prices in standard QF contracts. ODOE asserts that, regardless of a utility's decremental cost of operation, the utility either buys from the wholesale market or sells (or has the opportunity to sell) into the wholesale market. ODOE posits that by paying market prices to a QF, ratepayers are kept whole because the value of power during periods of deficiency is what the utility could sell it for or what it would buy it for, regardless of decremental costs of generation."

Order at 21 (emphasis added). The IOU Applicants had the opportunity to cross examine and attempt to discredit the ODOE witness on these points, but elected not to do so.

In adopting ODOE's recommendation, the Order stated:

> "We adopt ODOE's recommendation, supported by Staff, to set the floor for non-standard avoided cost prices at the wholesale power price forecast that is used to set sufficiency period avoided cost prices in standard QF contracts. *We are persuaded that the benefit of QF developers understanding the price floor outweighs the minimal risk described by PacifiCorp that avoided cost prices produced by the PDDRR method would be lower than market*."

Order at 23 (emphasis added). The Commission clearly understood the "risk" identified by the IOU Applicants but lawfully concluded that, in light of the limitations of use of a model, it was reasonable to set a price floor at the (normally very low) short-term market prices. Thus, adoption of the price floor was expressly tied to, and part and parcel of, the Commission's determination that it is reasonable to allow for use of three different modeling methods for non-standard avoided costs in Oregon.

The IOU Applicants argue that, in the case of Idaho Power and PacifiCorp, the market prices may be in excess of the rates their computer models might otherwise produce in certain hours. *See PacifiCorp and PGE's Reconsideration Application* at 6-7; *Idaho Power's Reconsideration Application* at 13. This argument fails at the outset because the computer models are only used to develop the avoided cost of *energy*, while the market-price floor is a floor for the overall avoided cost of *energy and capacity*. As Idaho Power explained, its avoided cost method (coined the "ICIRP Method") only uses the AURORA model to calculate the avoided cost of energy, *see* Idaho Power/200, Stokes/33-40, and a separate value is then added to the rate based on the fixed costs of a simple-cycle gas plant to compensate the QF for capacity. *See id.* at 41-44; *accord* PacifiCorp/800, Dickman/23 (in the PDDRR method "The Company calculates the avoided fixed costs of the next deferrable resource outside of the GRID model based on partial displacement of the next major thermal resource acquisition in the IRP"). The IOU Applicants have pointed to no record evidence demonstrating that the market-price floor will regularly exceed the overall energy and capacity costs developed in their preferred methods of rate calculation.[3]

The IOU Applicants' argument also rests on a faulty premise. The implicit premise of their argument is that the utilities' preferred rate methods and models will always produce an exact and unassailable estimate of the actual avoided costs, and therefore use of any other rate, including a projected market price, in any given hour must therefore be unlawful. But there is no basis to assume that their three different methods of calculating the rates will always be the precisely correct avoided cost on an instantaneous basis over the term of a contract. Indeed, the very fact that there are now three different modeling methods disproves this implicit assumption in the IOU Applicants' argument. In any given hour, each of the IOU Applicants' methods is likely to produce a different rate. If, for example, PacifiCorp's "PDDRR" modeling method is the only way to accurately estimate the avoided costs, then Idaho Power's and PGE's different rate calculation methods are just as unlawful as use of the market price floor. The IOU Applicants reliance on three different modeling methods defeats their own argument.

Furthermore, and more fundamentally, the IOU Applicants cannot parse out adoption of

[3] PacifiCorp points to its witness's bare statement that, "There are 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." *PacifiCorp and PGE's Reconsideration Application* at 5 (citing PacifiCorp/1400, Dickman/7) (emphasis added). But PacifiCorp offered no actual comparison of a market-price projection to the PDDRR method's projection of energy and capacity to support this statement. The record therefore contains no support for Mr. Dickman's bare allegation.

the market-price floor from adoption of computer models for non-standard rates. The market-price floor was intended to provide some (albeit very limited) measure of predictability and "understanding" to the non-standard rate method calculations in order to mitigate the one-sided advantage in the utility's favor with use of the proprietary models. If a market-price floor cannot lawfully be implemented, it would be reasonable to simply reject the proposed use of three different modeling methodologies for each of the utilities, and return to the prior method of calculating non-standard rates.

The IOU Applicants also argue that the market prices used for non-standard rates may be in excess of the deficiency period standard rates during certain times of the year, relying entirely on PGE's currently effective rate schedules containing deficiency period rates that are actually lower than the sufficiency period rates. *See PacifiCorp and PGE's Reconsideration Application* at 7-8. Notably, PGE does not assert that the Commission should simply allow it to use standard rates for all QFs; instead, it appears to complain that the market-price floor will preclude it from calculating non-standard rates that are lower than the standard rates in all hours of the long-term contract.

This argument has several obvious flaws. First, as with the IOU Applicants' prior argument, this argument presumes that PGE's existing Schedule 201 contains an unassailably correct avoided cost projection. Second, there is no explanation for why PGE alone has deficiency period rates in its current standard rate schedule that are below market prices. On its face, it appears that PGE's standard rates in question are far below any reasonable estimate of PGE's avoided costs. Finally, it is not clear that the extremely low rates PGE is currently offering in Schedule 201 will remain in effect after correction of the double discount and implementation of more reasonable capacity contribution assumptions in accordance with the stipulation recently signed in docket UM 1719. If anything, this argument should lead to an investigation of why PGE's deficiency period rates in Schedule 201 are lower than the short-term market prices. It provides no basis to revisit the new market-price floor for non-standard rates.

In short, the IOU Applicants provide no basis for reconsideration of the non-standard rate calculation issue, but if the Commission is inclined to revisit the issue it should simply re-instate the prior rate methodologies to eliminate the one-sided advantage imposed by use of computer models and three different, utility-specific methods.

IV. CONCLUSION

CREA and REC respectfully request that the Commission deny the applications for reconsideration for the reasons discussed in this response. Furthermore, since there is no basis for reconsideration, the IOU Applicants' request to stay the Order should likewise be denied.

RESPECTFULLY SUBMITTED this 26th day of July 2016.

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