

October 24, 2016

VIA ELECTRONIC FILING

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

Attn: Filing Center

Re: Docket UM 1610—PacifiCorp’s Response Comments

PacifiCorp, d/b/a Pacific Power (PacifiCorp or Company), submits these comments responding to Staff’s Report for UM 1610, which is on the agenda for the Public Utility Commission of Oregon’s (Commission) October 26, 2016, public meeting. The procedural issue before the Commission is exceedingly narrow—whether PacifiCorp’s non-standard avoided cost (Schedule 38) compliance filing is consistent with Order No. 16-174.¹ Simply put, it is.

Staff has failed to point to any inconsistencies between PacifiCorp’s compliance filings and the terms of Order No. 16-174. Nonetheless, Staff would have the Commission reject PacifiCorp’s compliance filing based on an entirely new argument—that Schedule 38 pricing should reflect a renewable price stream. This issue was not litigated in the proceeding that led to Order No. 16-174. Indeed, the only evidence in the record on this issue is Staff’s uncontroverted testimony that the non-renewable Schedule 37 price stream should form the basis for negotiating Schedule 38 prices.

Staff’s recommendation are flagrantly inconsistent with its testimony in this proceeding, and should be disregarded. PacifiCorp’s compliance filing, which was submitted over three months ago, complies with the Commission’s conclusions in Order No. 16-174. The substantive issue of whether non-standard avoided cost prices should reflect a renewable price stream is before the Commission in Docket No. UM 1799, and should be resolved there, rather than in this proceeding where the Commission’s review is narrowly focused on the procedural question of whether PacifiCorp’s Schedule 38 complies with Order No. 16-174.

I. BACKGROUND

A. Staff Supported PacifiCorp’s PDDRR Methodology

Phase II of this docket involved a series of issues concerning avoided cost contract terms, conditions, and pricing. Issue 7, which is implicated here, asked:

¹ See, e.g., Order No. 10-260, Docket No. UM 1452 (June 30, 2010) (“The standard of review for a compliance filing is whether the [compliance filing] is consistent with the resolutions and determination made by the Commission in its final order.”)

What is the most appropriate methodology for calculating non-standard avoided cost prices? Should the methodology be the same for all three electric utilities operating in Oregon?

PacifiCorp submitted testimony recommending its Partial Displacement Differential Revenue Requirement (PDDRR) methodology, which it commonly uses to calculate non-standard avoided cost prices.² PacifiCorp's testimony details how the PDDRR modelling approach works, both during the resource sufficiency and deficiency periods. For the deficiency period, PacifiCorp described the PDDRR methodology as follows:

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 (that has not already been displaced by QFs with contracts extending beyond the expected online date of the next major resource). The fixed costs of the deferrable resource as reported in the IRP are adjusted for the capacity contribution of the specific QF type. Because the GRID model results capture the system impacts of displacing the deferrable resource, the avoided fixed costs are converted to a volumetric (\$/MWh) rate by spreading them over the QF's expected annual generation.³

Staff unequivocally supported PacifiCorp's proposal to adopt the PDDRR methodology for calculating non-standard avoided cost prices.⁴ Staff recommended that utilities be "allowed to use a computer based model to calculate negotiated avoided costs."⁵ Staff described the PDDRR methodology as "thoroughly vetted by the companies and Staff."⁶ Staff also testified that the PDDRR methodology is "likely to provide a more accurate quantification of the impact of a QF based on its specific characteristics than a generic CCCT calculation with adjustments applied to it. To put it simply, an estimate (the adjustments) overlaid onto a simplified estimate (the avoided CCCT resource) will likely be less accurate than a single complex estimate."⁷

B. Staff Recommended Calculating Schedule 38 Prices Based on the Schedule 37 Non-Renewable Price Stream

In its opening testimony in Phase II, Staff unambiguously rejected the notion that utilities should base non-standard avoided cost prices off the standard renewable prices stream:

Q. Are PGE and PacifiCorp required to use Standard Renewable Avoided Cost prices as the starting point when the QF seeking a non-standard contract is a renewable QF?

² PAC/800, Dickman/16-29.

³ PAC/800, Dickman/23.

⁴ Staff/600, Andrus/20-22.

⁵ Staff/600, Andrus/22.

⁶ *Id.*

⁷ Staff/500, Andrus/34.

- A. Staff does not think so. The Commission issued its guidelines for negotiating non-standard contracts prior to their decision to require PGE and PacifiCorp to offer Standard Renewable Avoided Cost prices. The Commission's order requiring Standard Renewable Avoided Cost prices does not specify that PacifiCorp and PGE are to use these renewable prices as the starting point for negotiations with renewable QFs seeking non-standard contracts. In the absence of such a requirement, Staff interprets Order No. 07-360 to require that Standard Non-Renewable Avoided Cost prices are the starting point for negotiations regardless of whether the negotiating QF is a renewable or non-renewable.⁸

No party rebutted Staff's testimony. Staff's testimony on the issue of whether non-standard avoided cost prices should be based on the standard renewable stream is the only evidence in the record on this point.

C. The Commission Adopts PacifiCorp's PDDRR Methodology

On May 13, 2016, the Commission issued Order No. 16-174, which authorized PacifiCorp to use its PDDRR methodology *as described in PacifiCorp's testimony* to calculate Schedule 38 prices.⁹ The Commission instructed parties to submit revised contracts and avoided cost schedules that comply with the order.

D. PacifiCorp's Compliance Filing & Reconsideration

PacifiCorp submitted a revised Schedule 38 conforming to Order No. 16-174 on July 12, 2016. PacifiCorp and PGE also filed a Joint Application for Reconsideration on the same day, which asked the Commission to reconsider a narrow aspect of Order No. 16-174 (whether non-standard avoided cost prices should be subject to a market price floor). The Commission denied reconsideration on September 8, 2016.¹⁰

No party sought rehearing or reconsideration of Order No. 16-174 on grounds that non-standard avoided cost prices should be based on a renewable avoided price stream.

II. ARGUMENT

The Commission has repeatedly ruled that "the standard of review for a compliance filing is whether the [compliance filing] is consistent with the resolutions and determination made by the Commission in its final order."¹¹ In its Report, Staff inexplicably disregards this standard and seeks to transform the narrow procedural question posed by a compliance filing (i.e., whether the filing complies with a Commission order) into a broad substantive debate. Staff's recommendations squarely conflict with its own testimony in UM 1610 Phase II. Staff asks the

⁸ Staff/500, Andrus/32-33.

⁹ Order No. 16-174 at 2 ("PacifiCorp is authorized to use its [PDDRR] method to determine a starting point for non-standard contract avoided cost price negotiations.")

¹⁰ Order No. 16-337, Docket No. UM 1610 (Sept. 8, 2016).

¹¹ *See, e.g.*, Order No. 10-260.

Commission to further delay implementation of a final order based on: (1) arguments that *were not* presented in Phase II, and (2) a complaint that was filed *after* the relevant order was issued (and after the time to seek rehearing passed).

Staff misapprehends the issue presented by PacifiCorp's compliance filing. According to Staff, the "core issue presented by PacifiCorp's July 12, 2016 compliance filing discussed in this memorandum is whether PacifiCorp is required to offer a renewable and nonrenewable avoided cost price stream to renewable QFs seeking to enter into a nonstandard contract." That is simply not the case. The issue before the Commission is whether PacifiCorp's July 12, 2016 Schedule 38 update complies with the Commission's order in Phase II of this docket (Order No. 16-174). Staff has not argued (and cannot argue) that PacifiCorp's filing is inconsistent with Order No. 16-174. In that order, the Commission authorized PacifiCorp to use its PDDRR methodology to calculate non-standard avoided cost prices. PacifiCorp's testimony provides a detailed description of the PDDRR methodology, and Staff agreed that PacifiCorp's PDDRR methodology would result in more accurate avoided cost prices.¹²

Staff takes the unprecedented position that the Commission should decline to implement Order No. 16-174 based on arguments that were not made in Phase II. The issue of whether non-standard avoided cost prices should be based on the standard renewable price stream was not litigated in Phase II. The *only* testimony on the issue is Staff's, which is quoted above.

No party argued to the contrary. On October 16, 2015, Staff filed a motion to admit prefiled testimony, which included an affidavit swearing to the truth and accuracy of that testimony.

In Order No. 16-174, the Commission authorized PacifiCorp to use the PDDRR methodology as described in its testimony.¹³ Staff did not seek rehearing on the issue of whether non-standard prices should be based on standard renewable prices (nor did any other party). And Staff has not withdrawn, revised, or supplemented its testimony, which remains the only evidence in this record on the issue.

By arguing that the Commission should reject PacifiCorp's compliance filing, Staff essentially argues that the Commission got it wrong in Order No. 16-174. Staff would have the Commission determine compliance not on the Phase II record and the language of Order No. 16-174, but on arguments that were not even before the Commission in Phase II. PacifiCorp is unaware of any precedent supporting such a position, and Staff cites no legal authority justifying its novel theory.

Staff incorrectly argues that Cypress's complaint in a different proceeding justifies rejecting PacifiCorp's compliance filing in this proceeding. But Staff cannot escape the facts that the issue in UM 1799 was not litigated in Phase II, and that the Commission did not address it in Order No. 16-174. Moreover, Staff cannot escape its own testimony in Phase II. PacifiCorp is

¹² See, e.g., Staff/600, Andrus/22 ("Staff believes that an accurate accounting for the impacts on individual utility systems can be achieved through the use of the production cost models, which are also used to estimate and set rates for power costs each year. They have been thoroughly vetted by the companies and by Staff.")

¹³ Order No. 16-174 at 23 ("We approve PacifiCorp's request to use its PDDRR method going forward ... We are persuaded that the PDDRR method improves non-standard QF avoided cost pricing for QFs selling to PacifiCorp and we adopt it.")

not suggesting that the Commission disregard the issue of whether non-standard avoided cost prices should be based on the standard renewable prices stream. On October 11, 2016, Cypress Creek Renewable LLC filed a complaint alleging that PacifiCorp should have offered Schedule 38 pricing for three large QFs. On a prospective basis, Order No 16-174 renders the issue moot because PacifiCorp no longer calculates Schedule 38 prices by adjusting Schedule 37 prices; it now uses the Commission-approved PDDRR methodology. Nonetheless, the Commission will address the issue of what price stream these projects are entitled to in that proceeding, docketed as UM 1799. PacifiCorp filed an answer on October 21, 2016, and expects that a prehearing conference will be set soon.

Finally, Staff's position that extra-record considerations justify rejecting a compliance filing conflicts with bedrock principles of administrative law and its own Internal Operating Guidelines.¹⁴

III. CONCLUSION

PacifiCorp respectfully asks the Commission to accept its July 12, 2016, Schedule 38 compliance filing. PacifiCorp's compliance filing presents the Commission with a simple question—whether its Schedule 38 proposal complies with the terms of the order. The arguments presented in Staff's Report are unavailing and do not justify further delaying implementation of Order No. 16-174. Staff's recommendations are inconsistent with its testimony in Phase II (the only testimony on the contested issue) and improperly rely on extra-record considerations. Accordingly, Staff's recommendations should be disregarded.

Respectfully submitted this 24th day of October, 2016.



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¹⁴ See ORS 756.558(2) (requiring the Commission to decide contested cases based “upon evidence received in the matter.”); see also Commission Internal Operating Guidelines, Order No. 14-358, Docket No. UM 1709, Appendix A at 7 (In contested cases, the Commission must base its decisions exclusively on an evidentiary record developed in a trial-like proceeding.”)