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2 **BEFORE THE PUBLIC UTILITY COMMISSION**
3 **OF OREGON**

4 **UM 1610**

5 In the Matter of

6 PUBLIC UTILITY COMMISSION OF
7 OREGON

8 Staff Investigation into Qualifying Facility
Contracting and Pricing

STAFF REPLY COMMENTS
(PacifiCorp Compliance Filing)

9 The filing under review is PacifiCorp's Compliance Filing submitted in response to
10 Commission Order No. 16-74, which resolved several issues presented in Phase II of the
11 Commission's investigation into contracting and pricing for qualifying facilities (QFs) under the
12 Public Utility Regulatory Policy Act (PURPA). The question presented by PacifiCorp's
13 Compliance Filing is whether PacifiCorp is required to offer renewable QFs seeking a non-
14 standard contract the option to select an avoided cost price stream that incorporates Renewable
15 Portfolio Standard (RPS)-related costs PacifiCorp would avoid with purchases from the
16 renewable QF. As discussed in its October 19, 2016 Public Meeting Memorandum and October
17 31, 2016 Supplemental Comments, Staff believes the answer to this question is "yes."

18 In Order No. 11-505 the Commission ordered both Portland General Electric Company
19 (PGE) and PacifiCorp to offer renewable QFs two alternate avoided cost streams, one based on
20 costs of a combined cycle combustion turbine (CCCT) and another based on the costs of the next
21 planned renewable resource in the utility's Integrated Resource Plan (IRP).¹ The Commission
22 has not addressed this requirement (with respect to non-standard QFs) since that order.²

23 ¹ *In the Matter of Public Utility Commission Investigation into Resource Sufficiency Pursuant to*
24 *Order No. 06-538 (Docket No. UM 1396); Order No. 11-505.*

25 ² In Phase I of UM 1610, the Commission adopted Staff's recommendation to adjust the standard
26 renewable avoided cost prices to take into account the QF resource type's contribution to peak
capacity (CTP). (Order No. 14-058.) This modification does not apply to non-standard avoided
cost prices because utilities were already able to modify avoided cost prices to take into account
the contracting QF's contribution to peak.

1 Accordingly, PacifiCorp's Compliance Filing, under which renewable QFs seeking a non-
2 standard contract will not have the option to select an avoided cost price stream based on costs of
3 an avoidable renewable resource, is not compliant with the Commission's PURPA policies.

4 PacifiCorp urges the Commission to accept its filing. PacifiCorp acknowledges that it
5 will not offer a renewable avoided cost price stream to renewable QFs seeking a non-standard
6 contract.³ PacifiCorp argues the Commission implicitly rescinded the requirement for two
7 avoided cost price streams in Order No. 16-174 when it authorized PacifiCorp to use its Partial
8 Displacement Differential Revenue Requirement (PRRDD) methodology to calculate non-
9 standard avoided cost prices. PacifiCorp bases this argument on the assertion its UM 1610 Phase
10 II testimony clearly described that PacifiCorp would calculate only one avoided cost price
11 stream, (based on a deferred thermal resource), and that the Commission therefore eliminated the
12 requirement to offer a renewable avoided cost price stream when it authorized PacifiCorp to use
13 the PDDRR methodology.⁴

14 PacifiCorp's argument the Commission has implicitly eliminated the requirement for
15 PacifiCorp to offer a renewable avoided cost price stream to renewable QFs seeking a non-
16 standard contract under PURPA is factually and legally incorrect. Specifically, the factual
17 assertion underlying PacifiCorp's argument—that PacifiCorp's testimony clearly reflects that
18 PacifiCorp would offer renewable QFs only one avoided cost price stream (based on a thermal
19 resource) if the Commission authorized PacifiCorp to use its PDDRR methodology—is not
20 supported by the record. And, PacifiCorp's legal premise – that the Commission can implicitly
21 rescind a previously-imposed requirement without explanation – is inconsistent with Oregon's
22 Administrative Procedures Act (APA).

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26 ³ UM 1610 PacifiCorp's Opening Comments 1-2.

⁴ UM 1610 PacifiCorp's Opening Comments 2-4.

1 **1. PacifiCorp’s testimony did not clearly establish that PacifiCorp intended to**
2 **eliminate its obligation to offer two alternate avoided cost price streams use the**
3 **PDDRR methodology to establish only one.**

4 As discussed in Staff’s Opening Comments, PacifiCorp’s testimony did not clearly show
5 that PacifiCorp proposed to not offer a renewable avoided cost price stream to renewable QFs
6 seeking a non-standard contract. While some of PacifiCorp’s descriptions of the PDDRR model
7 did include a reference to “deferrable thermal resources,” just as many descriptions included only
8 references to “the next deferrable resource in the IRP preferred portfolio” or “next deferrable
9 resource”:

- 10 • “In addition, the PDDRR method includes avoided fixed costs of the Company’s
11 next major resource acquisition, based on the cost and timing of the next
12 deferrable resource in the IRP preferred portfolio.”⁵
- 13 • “The timing for including avoided fixed costs from the next deferrable resource is
14 adjusted to account for new QFs[.]”⁶
- 15 • “The second simulation (the Avoided Cost Simulation) calculates net power costs
16 of the resource portfolio with two modifications; the operating characteristics of
17 the next QF are added with its energy included at zero cost, and the capacity of
18 the next deferrable resource is reduced by an amount equal to the QF’s capacity
19 contribution.”⁷

20 PacifiCorp’s sporadic use of the qualifier “thermal” for “deferrable resource” in some but not all
21 of its testimony regarding the PDDRR method did not establish that PacifiCorp would only be
22 using deferrable thermal resources to calculate non-standard avoided cost prices.

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25 ⁵ PAC/800, Dickman/18, lines 6-7.

26 ⁶ PAC/800, Dickman/18, lines 9-10.

⁷ PAC/800, Dickman/22, lines 5-9.

1 Staff, the Oregon Department of Energy (ODOE), Obsidian Renewables, LLC
2 (Obsidian), Renewable Northwest, Community Renewable Energy Association (CREA),
3 Renewable Energy Coalition (REC), and Northwest and Intermountain Power Producers
4 Coalition (NIPPC), have all submitted comments stating that they were unaware that PacifiCorp
5 intended to not offer a renewable avoided cost price stream to renewable QFs seeking a non-
6 standard contract if the Commission adopted the PDDRR methodology.⁸ These comments
7 reflect that PacifiCorp's testimony regarding the PDDRR methodology was not sufficiently clear
8 to even put parties on notice that PacifiCorp was proposing to offer renewable QFs seeking a
9 non-standard contract only one avoided cost price stream. Given that PacifiCorp's testimony
10 was not sufficiently clear to even make parties aware of the proposal to not offer a renewable
11 avoided cost price stream if authorized to use its PDDRR, the Commission should agree with
12 PacifiCorp that the Commission implicitly approved this proposal when it approved PacifiCorp's
13 request to use its PDDRR method to calculate non-standard avoided cost prices.

14 **2. The Commission should not conclude it implicitly rescinded the previously-**
15 **imposed requirement to offer renewable QFs two alternate avoided cost price**
16 **streams.**

17 The Commission is required to explain an agency order that departs from a
18 previously-established policy. ORS 183.482(8)(b)(B), which is part of Oregon's
19 Administrative Procedures Act (APA), specifies that on review of an agency order, the

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21 ⁸ Comments of the Community Renewable Energy Association, Renewable Energy Coalition,
22 and Northwest and Intermountain Power Producers Coalition 1-2 ("Instead of clearly asking the
23 Commission to rule on a proposal to take away the renewable avoided cost rate for large QFs,
24 PacifiCorp attempted to sneak a large policy change past the parties and the Commission through
25 vague, ambiguous and contradictory testimony and pleadings."); Comments of Obsidian
26 Renewables, LLC 1 (Assuming that PacifiCorp intended all along for the PDDRR methodology
to repeal its obligation to provide a renewable price-stream for non-standard QFs, PacifiCorp
failed to fully disclose this intent or the import of its proposal."); Comments of the Oregon
Department of Energy 2 ("The Department assumed the PDDRR method would be able to
incorporate the difference in avoided costs between a non-renewable and renewable QF.");
Comments of Renewable Northwest 3 ("However, as PacifiCorp acknowledges, the issue of
whether QFs above the eligibility threshold should be able to select a renewable avoided cost
price stream was not litigated in Phase II of UM 1610.).

1 reviewing court shall remand an order that is “[i]nconsistent with an agency rule, an
2 officially stated agency position, or a prior agency practice, if the inconsistency is not
3 explained by the agency[.]” An order that “implicitly” rescinds a previously-made policy
4 decision without discussion does not comply with the APA.

5 Without explanation, a departure from a previously-imposed policy can appear
6 arbitrary. This is particularly true here for the following reasons:

- 7 (1) The arguments PacifiCorp made in favor of the PDDRR methodology, (to
8 calculate avoided cost prices that take into account more precisely the
9 availability of the QF’s output based on the characteristics of the QF) do
10 not support reversing the Commission’s 2011 decision to require
11 PacifiCorp and PGE to offer renewable QFs an avoided cost price stream
12 that takes into account the RPS-related costs PacifiCorp and PGE could
13 avoid with purchases from the QF.
- 14 (2) Nothing in the Phase II record explains why it is appropriate for the
15 Commission to require PacifiCorp to offer a renewable avoided cost price
16 stream to renewable QFs that qualify for a standard contract, but to not
17 impose the same requirement with respect to QFs that don’t.
- 18 (3) Nothing in the Phase II record explains why it is appropriate for the
19 Commission to treat renewable QFs seeking a non-standard contract in
20 PacifiCorp’s territory differently from the same type of QFs in PGE’s
21 territory.

22 In the underlying proceeding, PacifiCorp urged the Commission to adopt the
23 PDDRR methodology because it “is a more accurate approach for determining the value
24 of the energy and capacity on PacifiCorp’s system than the current method of making
25 individual adjustments to the Proxy Method, because it directly measures the impact each
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1 specific QF has on PacifiCorp 's power costs.”⁹ PacifiCorp specifically argued that the
2 PDDRR method was better than the Proxy Method for calculating avoided cost rates
3 because the PDDRR method would take into account “all of the key avoided cost factors
4 identified by federal regulations,” referring to the seven factors listed in 16 U.S.C. §
5 292.304(e)(2).”¹⁰

6 The seven factors listed in § 292.304(2) relate to the availability of the QF’s
7 energy and capacity based on the characteristics of the QF. Adjustments to account for
8 the QF’s availability have nothing to do with the rationale underlying the Commission’s
9 decision to require PacifiCorp and PGE to offer renewable QFs two avoided cost price
10 streams. In Order No. 11-505, the Commission stated that that “[r]enewable QFs willing
11 to sell their output and cede their RECs to the utility allow the utility to avoid building (or
12 buying) renewable generation to meet their RPS requirements. These QFs should be
13 offered an avoided cost price stream that reflects the costs the utility will avoid.”¹¹

14 There is no nexus between PacifiCorp’s proffered rationale for the PDDRR and
15 an implicit reversal of the requirement to offer a renewable avoided cost price stream to
16 QFs seeking a non-standard contract. Accordingly, there is no basis for the reversal of
17 the renewable avoided cost price stream that can be extrapolated from the Phase II
18 record.

19 There is also no rationale that can be extrapolated from the Phase II record that
20 would support disparate treatment for non-standard QFs in PGE’s and PacifiCorp’s
21 territories. PGE did not ask for and the Commission did not authorize a change to the
22 methodology that PGE uses to calculate non-standard avoided cost prices. Non-standard
23 renewable QFs in PGE’s territory are eligible for a renewable avoided cost price stream.

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⁹ UM 1610 Phase II PacifiCorp Pre-hearing Brief 30 (September 2, 2015).

25 ¹⁰ UM 1610 Phase II PacifiCorp Pre-hearing Brief 31 (September 2, 2015).

26 ¹¹ In the Matter of Public Utility Commission of Oregon Investigation into Resource Sufficiency
Pursuant to Order No. 06-538 (Docket No. UM 1396); Order No. 11-505 at 9.

1 The Phase II record is completely silent as to why non-standard renewable QFs in these
2 two territories should be treated differently in this regard.

3 When the Commission has authorized the utilities to use different methodologies,
4 it has explained the rationale. For example, in Order No. 05-584, the Commission
5 allowed Idaho Power to use the method for calculating avoided cost rates that Idaho
6 Power used in Idaho, rather than requiring Idaho Power to use the methodology the
7 Commission had ordered PGE and PacifiCorp, explaining that the administrative burdens
8 to Idaho Power outweighed the benefits.¹²

9 Finally, the record does not provide a rationale for treating standard and non-
10 standard QFs in PacifiCorp's territory differently with respect to the availability of a
11 renewable avoided cost price stream. The Commission has previously explained why it
12 distinguishes between smaller QFs and larger QFs when it comes to eligibility for
13 standard rates. Standard rates and contracting eliminate barriers to entry for smaller
14 QFs.¹³ This rationale does not support discontinuing renewable avoided cost prices for
15 larger QFs.

16 **3. The Commission has authority to reject PacifiCorp's Compliance Filing because it**
17 **does not comply with Order No. 11-505.**

18 PacifiCorp asserts that "[n]o party has argued that PacifiCorp's Schedule 38 compliance
19 filing is inconsistent with Order No. 16-174. Instead, Staff and others improperly argue that the
20 Commission should deny the compliance filing based on evidence and arguments that are not
21 part of the Phase II record."

22 Contrary to PacifiCorp's assertion, Staff has not offered evidence that is not part
23 of the record in Phase II. Staff has only referred to previous Commission orders.

24 ¹² *In the Matter of Public Utility Commission of Oregon Investigation into Electric Utility*
25 *Purchases from Qualifying Facilities* (Docket No. UM 1129), Order No. 05-584 at 24.

26 ¹³ *In the Matter of Public Utility Commission of Oregon Investigation into Electric Utility*
Purchases from Qualifying Facilities (Docket No. UM 1129), Order No. 05-584 at 13 ("Standard
contracts are designed to eliminate negotiation and to thereby remove transaction costs.")

1 PacifiCorp's assertion that the Commission cannot consider whether PacifiCorp's filing
2 complies with previous Commission orders as well as with Order No. 16-174 is alarming.
3 If PacifiCorp is correct, PacifiCorp could submit a compliance filing that departs from
4 previously-established Commission policy, but the departure would not be subject to
5 challenge by any party or the Commission because the previously-established policy was
6 not litigated in the order that is the basis of the compliance filing.¹⁴ Limiting review of
7 compliance filings in this manner is untenable. It is axiomatic that the Commission's
8 authority regarding a compliance filing for a PURPA order is sufficiently broad to ensure
9 the filing complies with all effective *and pertinent* Commission orders.

10 Further, PacifiCorp's assertion that the Commission's compliance review is
11 limited to the four corners of PacifiCorp's filing and the closed record in Docket No. UM
12 1610 is inconsistent with the complex process the Commission undertook after its
13 previous PURPA investigation to determine whether the utilities filings were in
14 compliance. After the Commission issued Order No. 05-584 in Docket No. UM 1129, all
15 three utilities submitted filings to implement the policies adopted by the Commission in
16 the order. Parties identified multiple compliance related issues and the Commission

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25 ¹⁴ See Comments of Obsidian Renewables, LLC at 3-4 ("Taken to its logical conclusion,
26 PacifiCorp's argument is that it may take a position in a compliance filing that is completely
unhinged from the underlying Commission order so long as no party had previously anticipated
and objected on the record to such a position.")

1 ordered additional proceedings to resolve disputes as to whether the utilities' filings
2 complied with Order No. 05-584 or not.¹⁵

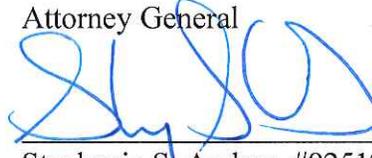
3 **CONCLUSION**

4 Staff recommends that the Commission reject PacifiCorp's Compliance Filing.
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8 DATED this 3rd day of November 2016.
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10 Respectfully submitted,

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17 Commission of Oregon
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26 ¹⁵ *In the Matter of Public Utility Commission of Oregon* (Docket No. UM 1129) Order No. 06-538.