

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 1610

IN THE MATTER OF)	
THE PUBLIC UTILITY COMMISSION OF)	COMMENTS OF RENEWABLE
OREGON)	NORTHWEST
Investigation Into Qualifying Facility)	
Contracting and Pricing)	
<hr style="border: 0.5px solid black;"/>		

I. INTRODUCTION

Renewable Northwest submits these comments in response to the request for comments that the Oregon Public Utility Commission (“Commission”) issued in Order 16-417 regarding PacifiCorp’s compliance filing in UM 1610. As discussed below, we encourage the Commission to reject PacifiCorp’s filing for non-standard avoided cost rates because the Company seeks to eliminate the renewable avoided cost stream for renewable Qualifying Facilities (“QFs”) above the eligibility threshold based on an erroneous interpretation of Order 16-174. Order 16-174 did not rescind or render moot PacifiCorp’s obligation to offer a renewable avoided cost stream to renewable QFs above the eligibility threshold for standard avoided cost rates.

II. COMMENTS

This Commission’s long-standing policy allows renewable QFs to contribute to utility efforts to comply with Oregon’s renewable portfolio standard (“RPS”) and be compensated for that contribution. The Commission adopted its policy in Order 11-505, when it required utilities subject to Oregon’s RPS to offer renewable QFs the choice of selecting a renewable avoided cost stream separate from the avoided cost stream also available to non-renewable QFs.¹ The

¹ *In the Matter of Investigation Into Determination of Resource Sufficiency*. Docket No. UM 1396, Order No. 11-505 at 4, 9 (Dec. 13 2011).

renewable avoided cost stream must account for, among other factors, when and whether QF purchases contribute to avoiding utility procurement of a renewable resource.²

The Commission adopted its policy of requiring utilities to offer a renewable avoided cost stream in recognition of the role that renewable QFs can play in helping utilities to meet their Oregon RPS compliance obligations cost-effectively. Indeed, the Commission found that renewable QFs “willing to sell their output and cede their [renewable energy credits (“RECs”)] to the utility allow the utility to avoid building (or buying) renewable generation to meet their RPS requirement.”³ Hence, the Commission determined that such renewable QFs should be compensated for their contribution.⁴ Notably, the Commission did not restrict the availability of the renewable avoided cost stream to QFs of a particular size or to QFs eligible for standard, non-negotiated, avoided cost rates.

The availability of the renewable avoided cost stream to renewable QFs above the eligibility threshold was not an issue in Phase II of UM 1610. In closing Phase I of UM 1610, the Commission deferred to Phase II any proposed changes to the calculation of rates for non-standard contracts.⁵ In Phase II of UM 1610, the Commission characterized Issue 7—the only issue pertaining to non-standard rates—as: “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?”⁶ The Commission’s own characterization of Issue 7 did not discuss the renewable avoided cost stream being discontinued for QFs above the eligibility threshold for standard avoided cost rates. It is also worth noting that in a separate docket—UM 1734—the Commission reduced the eligibility threshold for solar QFs from 10 MW to 3 MW

² See *Id.* at 6.

³ *Id.* at 9

⁴ *Id.*

⁵ *In the Matter of Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24 2014).

⁶ Docket No. UM 1610, Order No. 16-174 at 2 (May 13 2016).

after parties to this docket filed testimony, but before the Commission issued Order 16-174 in Phase II of this docket.

PacifiCorp argues that its non-standard avoided cost filing complies with Order 16-174 based on an erroneous interpretation of that order.⁷ PacifiCorp’s argument relies on the premise that Order 16-174 rescinds or renders moot its obligation to offer a non-standard renewable avoided cost stream under Order 11-505. In Order 16-174, the Commission approved PacifiCorp’s use of its Partial Displacement Differential Revenue Requirement (“PDDRR”) method in calculating non-standard avoided cost prices based on its assessment that the model-based method “more accurately values energy and capacity on PacifiCorp’s system.”⁸ However, as PacifiCorp acknowledges, the issue of whether QFs above the eligibility threshold should be able to select a renewable avoided cost stream was not litigated in Phase II of UM 1610.⁹ Indeed, PacifiCorp did not request that the Commission change its longstanding policy of requiring that renewable QFs have the option to choose a renewable avoided cost stream when they can contribute to a utility’s RPS obligations. Hence, neither Staff nor parties addressed the issue in Phase II testimony or briefs.

Additionally, PacifiCorp’s argument relies on the idea that, while the issue was not litigated in Phase II, Staff’s testimony somehow supports a departure from the obligation to offer a non-standard renewable avoided cost stream.¹⁰ However, Staff has repeatedly stated—including most recently at the October 25, 2016 public meeting regarding PacifiCorp’s compliance filing—that its testimony does not support such a conclusion. Assuming—without agreeing—that Staff’s statements were to support PacifiCorp’s position, Order 16-174 still does

⁷ PacifiCorp’s Response Comments at 1.

⁸ Order No. 16-174 at 23.

⁹ PacifiCorp’s Response Comments at 1.

¹⁰ *Id.* at 4.

not include any reference to such statements. Instead, the Order states, “we consider the proposals in the context of federal and state law and our prior orders addressing these issues, *and decline to make changes without compelling evidence of a need for revision.*”¹¹ Not only is there no “compelling evidence” to support eliminating the renewable avoided cost stream for QFs above the eligibility threshold, there is no evidence that discusses this major policy change. Indeed, the Commission did not mention the issue in Order 16-174. Consequently, in Order 16-174, the Commission did not make a decision with regards to eliminating the renewable avoided cost stream for QFs above the eligibility threshold for standard rates, and PacifiCorp cannot point to Staff’s testimony to support a conclusion that is not in the order.

Contrary to PacifiCorp’s contention,¹² the Commission cannot change the policy that it adopted in Order 11-505 by accident or by implication. Although the Commission has the authority to make policy changes, it must explain its departure from prior decisions in doing so.¹³ Nowhere in Order No. 16-174 did the Commission rescind its long-standing policy of requiring a renewable avoided cost stream nor did it authorize PacifiCorp to ignore this policy, and the Commission cannot make such a policy change without explaining its departure from its prior decision.

Even if it were consistent with Oregon law to implicitly do away with the Commission’s longstanding policy of allowing renewable QFs to obtain a renewable avoided cost stream, it would not be sound policy to do so by implication and without discussion. The Commission’s policy requiring a renewable avoided price stream is an important PURPA policy with

¹¹ Order No. 16-174 at 1 (emphasis added).

¹² PacifiCorp’s Response Comments at 1-5.

¹³ See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43-57, (1983); *Williams Gas Processing-Gulf Coast Co., L.P. v. FERC*, 475 F.3d 319, 326 (DC Cir 2006) (citing *Nuclear Energy Inst., Inc. v. EPA.*, 373 F.3d 1251, 1296 (D.C. Cir. 2004)); *Moki, Inc. v. Oregon Liquor Control Comm’n.*, 68 Or. App. 800, 803, (1984); *Fister v. South Hills Health Care*, 149 Or. App. 214, 218-19 (1997), *rev den*, 326 Or. 389, 952 P.2d 62 (1998); *Cascade Forest Prods. v. Accident Prev. Div.*, 60 Or App 255, 260, (1982).

implications that include helping utilities like PacifiCorp more cost-effectively meet their Oregon RPS obligations. If such a major change were to occur without prior discussion, it could potentially embolden parties in the future to try to effectuate significant policy changes without describing the proposed changes and without proper vetting.

III. CONCLUSION

For the reasons stated above, Renewable Northwest encourages the Commission to reject PacifiCorp's filing for non-standard avoided cost rates and to give the company the opportunity to submit new non-standard avoided cost rates that include a renewable avoided cost stream.

Respectfully submitted this 31st day of October, 2016.

/s/ Silvia Tanner

Silvia Tanner
Staff Counsel
Renewable Northwest
421 SW Sixth Ave, Suite 1125
Portland, OR 97204
(503) 223-4544
silvia@renewableNW.org

/s/ Dina Dubson Kelley

Dina Dubson Kelley
Chief Counsel
Renewable Northwest
421 SW Sixth Ave, Suite 1125
Portland, OR 97204
(503) 223-4544
dina@renewableNW.org