

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER THE PUBLIC UTILITY)	
COMMISSION OF OREGON)	CASE NO. UM 1610
Investigation Into Qualifying Facility)	
Contracting and Pricing)	COMMUNITY RENEWABLE ENERGY
_____)	ASSOCIATION AND ONE ENERGY,
	INC.'S RESPONSE TO PACIFICORP'S
	REQUEST FOR ALJ CERTIFICATION

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”) and One Energy, Inc. hereby respectfully submit this response to PacifiCorp’s request for certification to the Public Utility Commission of Oregon (“OPUC” or “Commission”) of the ruling issued by Administrative Law Judge (“ALJ”) Shani Pines on June 10, 2014 (“Ruling”). PacifiCorp seeks certification of the Ruling under the rules governing the scope of certification to the Commission. *See* OAR 860-001-0110(a) and (c). According to PacifiCorp, the Ruling will result in a substantial detriment to the public interest or create undue prejudice to PacifiCorp; alternatively, PacifiCorp asserts the good cause exists to certify the Ruling for the Commission’s consideration.

CREA and One Energy, Inc. have been involved in workshops to address procedural and substantive issues related to PacifiCorp’s compliance filing (Advice No. 14-007), including the capacity contribution calculation at issue in PacifiCorp’s request for certification. CREA and One Energy, Inc. are hopeful that those ongoing discussions may moot the need for the ALJ or the Commission to address PacifiCorp’s request for certification. Whether settlement is achievable will likely become clear in two weeks or less.

However, if the ALJ or the Commission is forced to reach the issues raised in PacifiCorp's request for certification, PacifiCorp's request for certification should be rejected for several reasons, including:

- Granting PacifiCorp's Request would result in approving an avoided cost calculation with a known and agreed-upon error that works to undervalue the avoided cost rates in violation of federal and state law and policy.
- PacifiCorp failed to even respond to the underlying motions for clarification to which the Ruling pertains.
- The Ruling – which resolves no substantive issues – was a routine directive granting further proceedings on implementation of the Commission's newly-adopted capacity adjustment mechanism for calculating avoided cost rates.
- Although PacifiCorp complains that the Ruling will delay adoption of its updated avoided cost rates, the true cause of any delay is PacifiCorp's failure to make a compliance filing that was consistent with Order No. 14-058 on a variety of issues unrelated to the solar capacity credit.

II. BACKGROUND

In Phase 1 of this docket, the Commission Staff proposed a new methodology for accounting for the capacity contribution of different qualifying facility ("QF") resource types.

See Staff/100, Bless/23; Staff/102- Staff/103. Staff provided a sample calculation of its proposal, but Staff's witness, Adam Bless, explained:

The numerical values in these exhibits are solely for illustration and are not based on any actual QF. The capacity contribution factors in the exhibits are placeholders and do not imply any staff assumption for actual capacity contribution.

Staff/100, Bless/23.¹ The Commission adopted Staff’s proposed method for calculating capacity adjustments, as set forth in Staff/102-103, using input estimates derived from the utility’s acknowledged integrated resource plan (“IRP”), and directed the utilities to make compliance filings. Order No. 14-086 at 15.

On April 24, 2014, prior to the deadline for compliance filings, Obsidian, One Energy, Inc., and CREA filed motions for clarification of the methodology for calculating the capacity contribution. These motions demonstrated that the calculation method contained in Staff/102-103 results in a double discount to solar QFs, and thereby undervalues the avoided costs. In response, Staff agreed that Obsidian, One Energy, Inc., and CREA had identified a flaw in the calculation. Specifically, Staff – the party that proposed the calculation at issue – stated:

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. However, Staff does not believe it is possible to find an appropriate solution to the issue without further input from stakeholders.

Staff’s Response to Motions for Clarification and Motion for Reconsideration at 3 (May 9, 2014) (emphasis added). Staff suggested that the Commission allow parties to address the issue in the proceedings opened to address the compliance filings. Furthermore, PacifiCorp *made no response* opposing the motions for clarification. In fact, no party challenged the substantive position of the motions for clarification – that is, that there is an error in the calculation.

¹ While PacifiCorp claims that no party opposed Staff’s proposal, a cursory review of the filings reveals that other parties opposed proposals to adjust rates on the basis of capacity contribution and addressed the various methods of such calculations. *See* ODOE/100, Carver/7-8 (proposing the effective load carrying capability method); RNP/200, Lindsay/2-10 (directly challenging Staff’s proposal for capacity contribution calculations). In fact, the record even indicates that some parties believed that Staff’s proposal lacked the detail necessary to even fully respond to it. *See* RNP/200, Lindsay/2 (noting “Staff does not recommend a specific methodology to calculate capacity value of each resource type”).

On April 30, 2014, the Commission adopted Staff's recommendation to suspend and investigate PacifiCorp's Phase 1 compliance filing. *See* Order 14-148. The Staff memorandum adopted by the Commission's order specifically listed the new capacity contribution adjustments for standard and renewable rates as among the "substantial changes to the methodology" that warranted "additional time for review and analysis by Staff and the UM 1610 parties." Order No. 14-148 at App. at 2.

Logically, in light of the uncontested agreement that Staff's method of calculating the solar capacity contribution contained an error and that the Commission had itself already ordered further proceedings to consider the substantial changes to the rate calculation methodologies, on June 10, 2014, ALJ Pines ruled that the parties should address the capacity contribution issue in the investigations currently taking place for the compliance filings. *Ruling* at 2. Despite never challenging the initial motions for clarification, PacifiCorp now challenges the Ruling directing that the miscalculation be addressed with the compliance filings.

III. ARGUMENT

1. The Error In the Calculation of the Capacity Contribution Must Be Corrected.

Instead of addressing the uncontested fact that there is an error in the calculation of the capacity contribution for solar QFs, PacifiCorp attempts to erect procedural hurdles to correcting that error. PacifiCorp would have the Commission ignore the obvious error in the calculation of the avoided cost rates and approve the erroneous calculation as the Commission's new methodology for setting avoided cost rates. This is necessary, according to PacifiCorp, because no party challenged a calculation contained in a demonstrative exhibit attached to Staff's testimony in Phase 1.

PacifiCorp's proposal cuts against federal and state law. The OPUC must require Oregon utilities to purchase QF output at the purchasing utility's *full* avoided costs. *Amer. Paper Institute, Inc. v. Amer. Elect. Power Serv. Corp.*, 461 U.S. 402, 417-18 (1983); 16 U.S.C. § 824a-3(b); 18 CFR 292.304(b)(2); ORS 758.505(1), 758.525(1), (2). Rates calculated with an erroneous double discount of a solar QF's capacity value are not the full avoided cost rates. Additionally, Oregon's renewable portfolio standard law requires the Commission to develop policies and procedures that will enable the State to obtain eight percent of Oregon's retail load from small-scale renewable energy projects with generating capacity of 20 megawatts ("MW") or less by 2025. ORS 469A.210. Providing avoided cost rates that are known to be lower than the full avoided costs is inconsistent with the policy of promoting development of projects under 20 MW in size. The Commission cannot ignore the laws or policies it is charged with implementing on account of PacifiCorp's procedural arguments. Indeed, if the Commission were to grant PacifiCorp's motion and approve rates with a known error that undervalues the avoided costs, the Commission would be in violation of federal and state law.

2. PacifiCorp Waived Its Challenge.

PacifiCorp made no response to the motions for clarification that sought to correct an obvious calculation error. The only party to respond to the clarification motions was Staff. And Staff *agreed* that there is an error in Staff's initial calculation. If PacifiCorp desired to demonstrate that Staff's illustrative calculation attached to its testimony is correct and needs no refinements prior to being included in Commission-approved rates, PacifiCorp had the opportunity to do so at the time for responses to the motions for clarification. But PacifiCorp failed to do so. PacifiCorp therefore waived its right to summarily cut off analysis of this major

and novel component of Oregon's avoided cost rates. Having waived the opportunity to address the issue on the merits, PacifiCorp now seeks an order "overturning the ALJ's Ruling and affirming the calculation adopted in Order No. 14-058." *PacifiCorp's Request for Certification* at 8. This request is meritless. A party cannot fail to respond to the substance of a motion for clarification and then later seek to collaterally attack the ruling granting the unopposed motion.

3. The Ruling Falls Squarely Within the Authority of the ALJ Because the Ruling Was a Routine Procedural Directive Regarding Implementation of the Commission's Order That Further Investigations Be Held On the New Rate Calculation.

PacifiCorp's request for certification overlooks that the Commission itself directed that further investigations were necessary on the new capacity contribution adjustment. *See* Order No. 14-148 at App. at 2. While PacifiCorp's request for certification suggests that the ALJ did something procedurally improper, that is not the case. The ALJ merely directed the parties to address the capacity contribution issue in the already-opened investigation into the calculation of the avoided cost rates under the new methodology. In doing so, the ALJ followed the Commission's lead because the Commission had already issued an order directing further investigation on the substantial changes to the rate calculation, including the capacity contribution calculation. *Id.* There is no basis for certification of the ALJ's routine procedural directive. If PacifiCorp believes that it properly calculated the solar capacity contribution in its compliance filing, it has every right to demonstrate as such in the ongoing investigation, or reach an alternative resolution to that and other disputed issues with the other parties to the proceeding.

4. The Ruling Has Not Delayed Approval of PacifiCorp's Updated Rates; PacifiCorp's Non-Compliant Filing Has Delayed Approval of PacifiCorp's Updated Rates.

PacifiCorp suggests that the Ruling somehow has caused a delay in approval of PacifiCorp's Phase 1 compliance filing. That is not so. The Ruling was issued after the

Commission had already suspended PacifiCorp's compliance filing. There are multiple problems with PacifiCorp's compliance filing that are wholly unrelated to the capacity contribution issue. These include major errors, such as the assumption that the federal production tax credit is still in effect for purposes of calculating the renewable avoided cost rates and a unilateral decision by PacifiCorp to modify the methodology of calculating the sufficiency period rates. The compliance filing also contains numerous changes to the standard contract and tariff that have no relation to Order No. 14-058. Many of these unnecessary changes work to the detriment of QFs. Thus, the Ruling is not the source of the delay. PacifiCorp is the source of the delay.

IV. CONCLUSION

As noted above, CREA and One Energy, Inc. are hopeful that ongoing discussions will lead to a mutually agreeable resolution that will moot the need for the ALJ or the Commission to address PacifiCorp's request for certification. However, if the issues reach the ALJ or the Commission, the ALJ and/or the Commission should reject PacifiCorp's request for certification and reaffirm the conclusion in Order No. 14-148 and the ALJ's Ruling that the parties should correct the capacity contribution error in the ongoing compliance filing proceedings for PacifiCorp.

RESPECTFULLY SUBMITTED this 28th day of July 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of July, 2014, a true and correct copy of the within and foregoing **RESPONSE TO PACIFICORP'S REQUEST FOR CERTIFICATION** was served as shown to:

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