

March 18, 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 1729(1)—PacifiCorp’s Responsive Comments**

PacifiCorp, d/b/a Pacific Power (PacifiCorp or Company), responds to comments filed by Community Renewable Energy Association (CREA), the Renewable Energy Coalition (REC), Obsidian Renewables, LLC, and Renewable Northwest (collectively, the QF Parties) regarding the Company’s March 1, 2016 Schedule 37 avoided cost update.

The QF Parties ask the Commission to order PacifiCorp to skip this avoided cost update cycle, or, in the alternative, to open a wide-ranging investigation into PacifiCorp’s avoided cost update. These requests, if granted, would undermine existing Commission policy, harm customers, and create an endless cycle of avoided-cost litigation. PacifiCorp respectfully asks the Commission to update PacifiCorp’s avoided costs as soon as possible, consistent with its existing PURPA policy.

**A. PacifiCorp’s Avoided Cost Update Complies with Commission Rules and Policies and Should Be Approved**

The Commission’s rules require a utility to file avoided cost price updates within 30 days of Commission acknowledgment of the utility’s Integrated Resource Plan (IRP).<sup>1</sup> The Commission recently affirmed the timing of this mandatory update in Order No. 14-058.<sup>2</sup> The Company complied with the Commission’s requirements by filing its updated avoided costs on March 1, 2016, the day after the Commission acknowledged its 2015 IRP.<sup>3</sup>

No party asserts that the timing of the Company’s avoided cost update was inappropriate; to the contrary, the update complies with the timing required by rule and Commission order. Nevertheless, the QF Parties urge the Commission to “skip” this avoided cost update because the passage of Senate Bill (SB) 1547 will require an IRP Update and a new calculation of avoided cost at some indeterminate point in the future.

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<sup>1</sup> OAR 860-029-0080(3); OAR 860-029-0040(4).

<sup>2</sup> *In re Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 25-26 (Feb. 24, 2014).

<sup>3</sup> *In re PacifiCorp, d/b/a Pacific Power 2015 Integrated Resource Plan*, Docket No. LC 62, Order No. 16-071 (Feb. 29, 2016).

The Company recognizes that implementing SB 1547 may impact utility resource planning decisions. SB 1547, however, does not eliminate or waive the well-established timing requirements for avoided cost pricing updates. The impact of SB 1547 implementation on avoided cost pricing will be addressed through Commission action in the future. PacifiCorp will take all steps required by the Commission to address the new renewable portfolio standards as required by the Commission, but the existence of new policy on the horizon does not justify discarding current Commission rules.

**B. The QF Parties Urge the Commission to Upend Commission Rules Without Providing Any Good Cause for Doing So**

Renewable Northwest asks the Commission to reject PacifiCorp's Schedule 37 avoided cost pricing update because the Company's recently acknowledged 2015 IRP is "no longer accurate." Specifically, Renewable Northwest argues that certain assumptions in the Company's acknowledged IRP have been rendered inaccurate by the passage of SB 1547.<sup>4</sup> The QF Parties make the same argument, asking the Commission to either suspend and investigate PacifiCorp's filing, or reject the filing and order the Company to file new avoided cost prices after updating its IRP to account for passage of SB 1547.<sup>5</sup> The QF Parties also argue that QFs are entitled to challenge all aspects of a utility's avoided cost filing and seek the right to challenge a number of assumptions in PacifiCorp's filing.<sup>6</sup>

OAR 860-001-0000(2) allows the Commission to waive its rules only when good cause is shown. In this case, there is no good cause to undermine the Commission's existing rules and policies regarding the timing and derivation of avoided-cost updates.

**1. A Predictable Framework for Avoided Cost Updates Is Important**

The Commission has tied avoided costs to least cost planning (the precursor to IRP) since 1992. In Order No. 92-1793, the Commission "consolidate[d] the avoided cost process with least-cost planning schedule" and imposed the obligation now found in OAR 860-029-0040(4)(a) that a utility file avoided cost updates within 30 days of IRP acknowledgement.<sup>7</sup>

This Commission, utilities, and the QF Parties have all recognized the importance of the predictability of timing for avoided cost updates. As CREA explained recently in Docket UM 1752:

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<sup>4</sup> Comments of Renewable Northwest at 1 (Mar. 11, 2016).

<sup>5</sup> Comments of QF Parties at 1 (Mar. 11, 2016).

<sup>6</sup> Comments of QF Parties at 2-6.

<sup>7</sup> See Order No. 92-1793 at 2. At the time, the obligation was codified in OAR 860-029-040(a) and stated, "[e]ach public utility shall file with the Commission, within 30 days of Commission acknowledgment of its least-cost plan pursuant to Order No. 89-507, to become effective 30 days after filing, standard rates for purchases from [QFs]."

[T]he Commission is statutorily directed to provide a settled and uniform institutional climate for QFs, and has therefore developed a predictable framework within which [a utility] may update its avoided cost rates.<sup>8</sup>

Indeed, the QF Parties have frequently defended their right to a “predictable framework” for avoided cost updates. For example, when PGE filed a mid-cycle avoided cost update late last year, the QF Parties stridently objected, arguing that PGE’s efforts would upend the predictable timing of regular avoided cost updates. They deflected PGE’s concerns about avoided cost accuracy and fairness to customers, and instead defended the importance of adherence to the Commission’s existing rules and policies. As REC complained:

The Commission’s historic implementation of the timing of avoided cost updates has been inconsistent, and has apparently provided the utilities with confidence that inappropriate out-of-cycle updates will be allowed. *If the Commission adopts and (more importantly) follows clear policies regarding rate updates*, then utilities like PGE would not be as emboldened to ignore them.<sup>9</sup>

The QF Parties now argue that those “clear policies” should be rejected and PacifiCorp’s mandatory avoided cost update simply skipped. Despite this about-face, there is a consistent thread to the QF Parties’ arguments in various dockets: they would in all cases delay approval of avoided cost prices that are decreasing at the harm of PacifiCorp’s customers.

## **2. The QF Parties’ Recommendations Will Not Improve the Accuracy of the Avoided Cost Prices**

The ostensible basis for the QF Parties’ recommendations is the assertion that the Company’s 2015 IRP is “outdated” and cannot serve as an appropriate basis for an avoided cost update. But the Company’s current avoided costs are based on its 2013 IRP. If the Commission rejects PacifiCorp’s filing, PacifiCorp’s avoided costs will not suddenly become “more updated.” If the Commission rejects PacifiCorp’s update, the stale pricing on file will only get staler, QFs will continue to lock in pricing based on a three-year-old IRP, and customers will continue to pay these higher costs for power.<sup>10</sup>

The reality is that the development of an IRP and the process of IRP acknowledgement is a lengthy process. Events frequently occur between the drafting of an IRP and the acknowledgment of that IRP that may affect avoided cost pricing. That fact, which is true every

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<sup>8</sup> *In re Portland General Elec. Co.’s Revised Schedule 201 Qualifying Facility Information*, Docket No. UM 1752, Comments in Opposition of the Community Renewable Energy Association at 3 (Dec. 28, 2015).

<sup>9</sup> *In re Portland General Elec. Co.’s Revised Schedule 201 Qualifying Facility Information*, Docket No. UM 1752, Comments of Renewable Energy Coalition at 2 (Dec. 28, 2015) (emphasis added).

<sup>10</sup> The QF Parties’ request also rests on the assumption that avoided-cost pricing, like utility filed rates, are presumed to be just and reasonable until they are changed. PacifiCorp would submit that the opposite is true. By requiring a utility to update its avoided costs at *least* every two years, the Legislature created the presumption that a stale avoided cost is *not* just and reasonable.

year, does not itself render Commission rules and policies obsolete and should not serve as a basis for QFs' selective rejection of avoided cost updates.

**3. The QF Parties' Recommendations Would Harm Customers.**

The QF Parties give short shrift to utility customers. They note that *QFs* have a right to “just and reasonable” avoided costs, but fail to mention that utility customers also have this right.<sup>11</sup> The Commission understands this, and has explained that its goal is to “encourage the economically efficient development of [QFs] *while protecting ratepayers* by ensuring that utilities pay rates equal to that which they would have incurred in lieu of purchasing QF power.”<sup>12</sup>

The QF Parties' recommendations in this case, however, would harm customers, and they would do so without advancing the spirit or the letter of PURPA. As noted above, the QF Parties' recommendation that the Commission simply “skip” PacifiCorp's mandatory avoided cost update will *not* make avoided cost prices any more accurate, it will only allow QFs to lock in higher prices that are extremely stale. This would undermine the Commission's policies and procedures and harm customers for no meaningful purpose.

**C. The QF Parties Would Turn the Avoided Cost Approval Process into an Endlessly Litigated Free-For-All; the Commission Has Expressly Disavowed Such a Result**

If the Commission accepts the QF Parties' arguments, the avoided cost approval process may devolve into an endlessly litigated free-for-all. The QF Parties downplay the fact that their recommendations would upend the well settled timing for avoided cost updates and create a massive shift in the scope of review and investigation of such updates. The QF Parties' preferred process is simply another inappropriate way the QF Parties seek to delay the timely implementation of accurate avoided cost prices.

**1. Commission Policy Does Not Entitle QFs to a Full Investigation into Avoided Cost Compliance Filings; the Commission Has Expressly Rejected Such Requests on Policy Grounds**

The QF Parties cite a 2005 Commission order for the proposition that a QF can seek investigation of any issue to which it objects in an avoided cost update. This is an extremely problematic proposition, and it is simply not true. The Commission has made clear that a QF is not automatically entitled—by due process, by statute, or by any other source—to an investigation and hearing into the underlying assumptions of avoided cost filings.<sup>13</sup> As the Commission explained in 2010, long *after* the 2005 order cited by the QF Parties:

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<sup>11</sup> The Commission's rules make clear that avoided cost rates must be “just and reasonable to the public utility's customers,” as well. See OAR 860-029-0040(1)(a).

<sup>12</sup> *In re Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584 at 1 (May 13, 2005).

<sup>13</sup> *In re Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger than 20 Megawatts*, Docket No. UM 1401, Order No. 10-132 at 5 (Apr. 7, 2010).

[A]voided cost rates, which must be filed with and approved by this Commission, are not tariffs subject to the filing and suspension requirements imposed by ORS 757.205, et seq. [\* \* \*] Although the Commission must review and approve the rate filings, the legislature has not mandated an investigation or hearing to determine the reasonableness of those rates.<sup>14</sup>

The Commission explained its rationale in detail in Order No. 09-947, when it rejected a similar QF request for investigation and hearing into an avoided-cost update:

As part of our responsibility to provide incentives for QF development, we have adopted a process to provide predictability in avoided cost pricing in order to allow a potential developer or investor to easily evaluate the economic feasibility of a project. That process uses recurring, generic investigations to determine what methodologies should be used to most accurately value a utility's avoided costs. Our Order No. 05-584 was the culmination of one such comprehensive and lengthy docket docketed as UM 1129. We then require the utilities to use these adopted methodologies when updating their respective avoided cost tariffs and we review those filings for compliance with the approved methodologies.<sup>15</sup>

The Commission rejected QF requests to turn the avoided cost compliance filing into the equivalent of a rate case, explaining that opening up a full investigation and hearing on underlying avoided cost updates would undermine the purpose of the Commission's avoided cost process.<sup>16</sup>

The Commission explained that its policy was to undertake only a methodological compliance review of the filings to ensure the avoided cost approval process remains a streamlined one.<sup>17</sup> As a policy matter, the Commission explained, this streamlined compliance process helps ensure that avoided costs "are just and reasonable to QFs and to utility customers,

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<sup>14</sup> *Id.* at 6 (applying same rationale to deny Staff recommendation that QF interconnection agreements be filed as tariffs, and explaining, "[w]e reach a similar conclusion here. The standardized procedures and agreements should be filed with the Commission for approval under our PURPA mandate, not as tariffs subject to suspension and investigation.").

<sup>15</sup> *Id.* (emphasis added).

<sup>16</sup> See *In re Investigation to Determine if Pacific Power's Rate Revision Is Consistent with the Methodologies and Calculations Required by Order No. 05-584*, Docket No. UM 1442, Order No. 09-427 at 3-4 (Oct. 28, 2009).

<sup>17</sup> *Id.* In that order, the Commission denied QFs' request for investigation and hearing on the merits of underlying avoided cost assumptions, explaining that

ORS 757.210 does not apply to the review and approval of rates paid by utilities to QFs which is governed by the separate statutory framework set forth in ORS 758.505 to 758.555. Under these provisions, electric utilities are required to update their avoided costs at least every two years. Although the Commission must review and approve the filings, the legislature has not mandated an investigation or hearing to determine the reasonableness of those rates. Rather, we are charged with the obligation to ensure that rates paid to QFs are just and reasonable under the overarching goals of PURPA."

(emphasis in original) (footnote omitted).

while providing certainty to developers by allowing an expeditious review and updates of avoided cost prices.”<sup>18</sup> The Commission should reaffirm that policy here.

The QF Parties’ request for a full-blown hearing into the Company’s avoided cost update would eviscerate this precedent and set the parties further down a course they are already on—endless litigation that prolongs the usage of inaccurate and outdated avoided cost prices. Instead, the Commission should reaffirm its policy and decline to open up PacifiCorp’s avoided cost filing for a full investigation and hearing. As the Commission has explained, the question before the Commission is whether PacifiCorp’s filing complies with Commission’s carefully developed avoided-cost methodologies, nothing more.

**2. If the Commission Wishes to Investigate PacifiCorp’s Filing, It Should First Approve PacifiCorp’s Avoided Cost Update and Conduct a Limited Compliance Investigation Thereafter**

The QF Parties err by discussing the “suspension and investigation” of avoided cost filings as if such “suspensions and investigations” had the same consequences as the “suspension and investigation” of a utility retail rate filing. Respectfully, this is wrong. An avoided cost is not the legal equivalent of a utility “rate.” The Commission’s review of these different filings is governed by very different statutes, with very different purposes.<sup>19</sup>

One critical difference is the harm that results from the suspension of an avoided-cost update compared to suspension of a utility rate filing suspension. Customer harm *does not* occur when a utility rate filing is suspended for investigation for a limited time. The effect of a utility rate filing suspension lasts no longer than the time period the suspension is in effect. A six-month suspension of a utility rate filing means that a utility must continue to live with its existing rates for six months, no more. A six-month suspension of an avoided cost update, by contrast, means that during the six-month suspension period, QFs can lock in utility customers’ obligation to pay outdated avoided cost prices for upwards of 15 years.

Reflecting this difference, statutes governing review of utility retail rates and of avoided cost prices (which are not technically tariffed rates) are completely different. Statutes governing utility retail rate filings, or tariffs, contain detailed provisions requiring a hearing each time a utility retail rate filing is challenged.<sup>20</sup> They require utilities to file specific rate information with the Commission, and contain detailed rate suspension provisions that are aimed to ensure that customers and utilities remain whole during the pendency of a rate investigation.<sup>21</sup>

By contrast, avoided-cost statutes have no such requirement. Oregon law simply requires utilities to “file” avoided cost updates at least every two years, and the Commission to “review”

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<sup>18</sup> *Id.*

<sup>19</sup> The legal framework for establishing avoided cost is governed by the statutory framework set forth in ORS 758.505 to 758.555. Importantly, this is not the same framework established by ORS 757.210, which establishes the framework for utility rate cases.

<sup>20</sup> ORS 757.210.

<sup>21</sup> ORS 757.215.

and approve” them.<sup>22</sup> There is no hearing requirement, nor is the word “hearing” even mentioned in the avoided cost statutes. The requisite process is left up to the Commission. The Commission’s current streamlined process ensures that avoided costs are “just and reasonable to QFs and to utility customers, while providing certainty to developers by allowing an expeditious review and updates of avoided cost prices.”<sup>23</sup>

If the Commission wishes to investigate PacifiCorp’s avoided cost compliance filing, PacifiCorp asks the Commission to follow the process it followed in PacifiCorp’s 2009 avoided cost update, when QFs made similar requests for hearing. PacifiCorp filed updated avoided cost pricing in that docket on July 9, 2009. On August 20, 2009, Staff recommended that PacifiCorp’s filing be allowed to go into effect on August 26, 2009, and that the Commission *then* open a limited investigation and hearing to determine if the filing ‘has been determined consistent with the methodologies and calculations required by Order No. 05-584.’<sup>24</sup>

The Commission adopted Staff’s recommendation and approved PacifiCorp’s avoided cost update *before* conducting additional investigation and hearing. Those avoided costs were subject to correction after the investigation if the update was found to be inaccurate. The Commission then opened a limited investigation into whether the filing complied with the Commission’s approved methodologies, an investigation that ended with an order issued on December 28, 2009.<sup>25</sup> This order of events—approval followed by investigation—prevented QFs from locking in stale rates during the pendency of the compliance investigation. At the same time, the QFs could be certain that, if the avoided-cost update were improper, they would have access to a corrected avoided-cost price after a short investigation. If the Commission elects to investigate this filing, PacifiCorp would request the Commission follow the same procedure here.

The QF Parties’ request that the Commission “skip” this avoided-cost update cycle or open a wide-ranging investigation into PacifiCorp’s avoided-cost update would undermine Commission policy, harm customers, and create an endless cycle of avoided-cost litigation. PacifiCorp respectfully asks the Commission to update PacifiCorp’s avoided costs as soon as possible, consistent with Commission PURPA policy.

#### **D. PacifiCorp Will Address SB 1547 in Accordance with Commission Directives**

The Company anticipates that the Commission will open a rulemaking process to implement SB 1547, but updating avoided cost prices should not be put on hold indefinitely during the pendency of such a rulemaking. The Company is not arguing that there may be issues to work out associated with SB 1547, but SB 1547 is not yet included in an acknowledged IRP, and therefore, should not be considered when reviewing the company’s avoided cost update.

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<sup>22</sup> ORS 758.525.

<sup>23</sup> Order No. 09-427 at 3-4.

<sup>24</sup> Staff Report for August 25, 2009 Public Meeting from Ed Durrenberger, Lee Sparling, Ed Busch, and Maury Galbraith, Docket No. UM 1442 (Aug. 20, 2009).

<sup>25</sup> See Order No. 09-427 at 3-4, as well as subsequent Order No. 09-506 in that docket (affirming limited scope of investigation and approving avoided cost update).

Docket No. UM 1729(1)  
Public Utility Commission of Oregon  
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**E. Conclusion**

PacifiCorp appreciates the opportunity to provide these comments.

Respectfully submitted this 18<sup>th</sup> day of March, 2016.

Handwritten signature of Dustin Till in black ink, with the initials 'PBD' written to the right of the signature.

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