

March 11, 2016

Via Email

Commission Chair Susan Ackerman
Commissioner John Savage
Commissioner Steve Bloom
Oregon Public Utility Commission
3930 Fairview Industrial Dr SE
Salem, Oregon 97302-1166

RE: In the Matter of PACIFICORP, dba PACIFIC POWER, Application to Update
Schedule 37 Avoided Cost Purchases from Qualifying Facilities of 10,000 KW or
Less
Docket No. UM 1729(1)

Dear Commissioners:

The Renewable Energy Coalition (the “Coalition”), the Community Renewable Energy Association, and Obsidian Renewables, LLC (“Joint QF Parties”) submit these joint comments urging the Oregon Public Utility Commission (the “Commission”) to suspend and investigate PacifiCorp’s Schedule 37 avoided cost rate update. Alternatively, the Commission could simply reject PacifiCorp’s filing and order the company to file new avoided cost rates after updating its integrated resource plan (“IRP”) to account for the recent passage of SB 1547. The Commission should not simply rubber stamp the rates as “approved” because the rates do not reflect a reasonable estimate of PacifiCorp’s full avoided costs.

PacifiCorp’s Schedule 37 avoided cost rate update was outdated and inaccurate the day it was filed. The rates assume that the company will not acquire any renewable resources until sometime after 2038 or a new baseload gas plant before 2028. PacifiCorp, however, is planning to acquire new renewable resources in the next few years—not more than two decades from now. PacifiCorp is also likely to acquire new baseload gas resources before 2028 to replace coal generation and integrate new renewables.

PacifiCorp has proposed a 43% reduction in its renewable avoided cost rates, and a 16% reduction in its baseload renewable rates, on a fifteen-year levelized basis. The changed resource sufficiency periods by themselves account for a 37% reduction in the renewable avoided cost rates, and a 5% reduction in the baseload rates.

Moreover, PacifiCorp’s IRP and the Commission’s order acknowledging it did not address the issues of the specific year PacifiCorp must acquire its next major renewable and non-renewable generation resources. Therefore, interested parties should

have an opportunity to challenge and obtain Commission resolution of those critical avoided cost rate issues. In addition, any conclusions in the IRP, even if reasonable at the time, are outdated and inaccurate now that SB 1547 is the law.

Failing to correct these errors would result in rates well below PacifiCorp's actual avoided costs, and would drastically undercompensate qualifying facilities ("QFs") for the energy and capacity they provide to PacifiCorp and its ratepayers. Accurate avoided cost rates will provide at least an opportunity for a portion of PacifiCorp's new renewable resource acquisitions in the next few years to be non-company owned facilities.

1. PacifiCorp Must Prove the Accuracy of Its Avoided Cost Rates

Federal and state law charge the Commission with ensuring that PacifiCorp's avoided cost rates reflect a reasonable approximation of PacifiCorp's full avoided costs.¹ PacifiCorp has the burden of proof to demonstrate that the factual inputs and assumptions for its avoided cost rates are just and reasonable for both QFs and ratepayers. The legal standard for approving avoided cost rates is whether the rates "shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest."² PacifiCorp has the responsibility to "prepare, publish and file" its avoided cost prices, which "shall be reviewed and approved by the commission."³ Id. The Commission's administrative rules specifically state that the utility "has the burden of supporting and justifying" the underlying avoided cost data.⁴

The Commission's current process for setting avoided cost rates is similar to retail rates charged to end-use consumers.⁵ The Commission's rules provide that "[s]tandard rates for purchases shall be implemented . . . [i]n the same manner as rates are published for electricity sales"⁶ The rules further provide that these rates "shall be subject to

¹ Amer. Paper Institute, Inc. v. Amer. Elect. Power Serv. Corp., 461 U.S. 402, 417-418 (1983); ORS § 758.515(2)(b); see also 18 USC § 824a-3. PacifiCorp has previously agreed that avoided cost rates must be just and reasonable. Re Commission Investigation Into QF Contracting and Pricing, Docket No. UM 1610, PAC/1000, Griswold/15.

³ ORS § 758.525(1).

⁴ OAR § 860-029-0080(1)&(4).

⁵ In Docket No. UM 1610, the Coalition has proposed to modify the Commission's current approach and to allow the parties to contest key avoided cost related issues in the utilities' integrated resource planning proceedings. The Coalition continues to believe reviewing the inputs and assumptions concurrently with an integrated resource plan is superior to a post-IRP filing, such as this proceeding. Regardless, QFs and interested parties need to have some forum to challenge key inputs and assumptions, which at this time is only a post-filing proceeding.

⁶ OAR § 860-029-0040(4).

suspension and modification by the Commission.”⁷ The Commission has also stated that “[w]e **encourage** . . . interested parties to seek suspension of an avoided cost filing when necessary to address concerns about natural gas forecasts, **or any other aspect of a utility’s filing.**”⁸

The Joint QF Parties recognize that the starting place for the review of avoided cost rates is the last acknowledged IRP. PacifiCorp’s avoided cost rates should include “inputs and assumptions taken from IRPs that are subject to stakeholder review.”⁹ The Commission also expressly stated that the resource sufficiency/deficiency demarcation should be first addressed in the IRP.¹⁰ The IRP, however, is only the beginning of the analysis, and QFs and other interested parties have an opportunity to review and challenge these inputs and assumptions. Otherwise, there would be no point encouraging parties to request that the Commission suspend, review, and modify the avoided cost rates.¹¹ Therefore, the Commission’s established process for reviewing a post-IRP acknowledgment rate update is for the utility to include changes from the IRP, and allow QFs, Staff and interested parties an opportunity to review and challenge them.

2. The Commission Should Investigate PacifiCorp’s Highly Inaccurate Resource Sufficiency-Deficiency Period

It would be inappropriate to simply update PacifiCorp’s avoided cost rates using the estimated resource sufficiency/deficiency period in the company’s IRP. The date of PacifiCorp’s next planned thermal and renewable resources did not receive any substantive review in the IRP, because they were outside of the company’s action plan period. More importantly, these periods were obsolete when the IRP was acknowledged because of the passage of SB 1547, which requires PacifiCorp to remove the costs of coal from Oregon rates by 2030 and increase its new renewable resources to 50%, including heavy incentives for acquisition of renewable resources constructed in the next five years. At a minimum, PacifiCorp plans on acquiring significant amounts of new renewable resources in the next few years and not two decades from now.

⁷ OAR § 860-029-0080(6).

⁸ Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 36-37 (May 13, 2005) (emphasis added); Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006).

⁹ Re Commission Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014).

¹⁰ Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 36-37 (May 13, 2005); Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006).

¹¹ For example, natural gas prices are used in the utilities’ IRPs; however, the parties can review and challenge their reasonableness.

The resource sufficiency and deficiency demarcation can have a major impact on avoided cost rates. During the resource sufficiency period, avoided cost rates are based on market energy prices, which are currently at historic lows. During the resource deficiency period, avoided cost rates are based on the full costs of a new thermal resource (for baseload rates) or renewable resource (for renewable rates). The costs of these new capital intensive resources are much higher than market prices. Therefore, the year of deficiency is a critical factor in the overall prices paid to QFs, given the large price differential between resource sufficiency rates and resource deficiency rates.

QFs and interested parties should be provided an opportunity to review, challenge, and obtain Commission resolution regarding PacifiCorp's proposed resource sufficiency/deficiency demarcation. As the issue was not reviewed or acknowledged by the Commission, there are no grounds to bar consideration of the year of deficiency in an avoided cost compliance proceeding.

When the Commission first stated that it would look to the IRP for the resource sufficiency-deficiency demarcation, the Commission explained that it would look to "the start date of the 'first major resource acquisition' in the **action plan** of the most recent acknowledged IRP"¹² It is relatively straight forward to review the resource deficiency sufficiency period demarcation in the IRP when year of deficiency is within the utility's action plan. At the time the Commission decided to use the action plan as the starting point for determining the year of deficiency, PacifiCorp's action plans typically included a major resource acquisition within the action plan period. For example, in 2007-2008 the deficiency year was 2012, in 2009-11 the deficiency year was 2014, and in 2012-2013 the deficiency year was 2016.

The Commission no longer closely looks at the timing of the first major resource acquisition in the IRP, because it is well outside of the short-term action plan. For example, in PacifiCorp's just acknowledged IRP, the Coalition raised the issue of PacifiCorp's year of deficiency in its comments pointing out that it was inaccurate and unrealistic.¹³ During the December 17, 2015 public meeting, the Coalition again raised the issue of the "year of deficiency," but the Commission would not accept oral comments on this issue.¹⁴ The Commission's acknowledgment order only addressed issues regarding PacifiCorp's short-term action plan and did not address the year of

¹² Re Commission Investigation into determination of resource sufficiency, pursuant to Order No. 06-538, UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010); Re Commission Investigation into determination of resource sufficiency, pursuant to Order No. 06-538, UM 1396, Order No. 11-505 at 6 (Dec. 13, 2011).

¹³ Re PacifiCorp 2015 IRP, Docket No. LC 62, Comments at 4-5 (Aug. 27, 2015).

¹⁴ Re PacifiCorp 2015 IRP, Docket No. LC 62, Public Meeting from 1:23 to 1:26 (Dec. 17, 2015).

deficiency.¹⁵ In other words, no party has yet been provided the basic due process opportunity to challenge the deficiency period dates contained in PacifiCorp's proposed avoided costs. To summarily approve PacifiCorp's rates without further investigation, therefore, would contravene basic notions of due process.

Most importantly, aside from the obvious procedural infirmities that would result from depriving us of the opportunity to challenge the rates, PacifiCorp's proposed renewable resource sufficiency and deficiency periods are demonstrably wrong on the merits. As mentioned above, PacifiCorp's proposed avoided cost rates assume that the company will not acquire a new renewable resource until some undetermined date after 2038. PacifiCorp, however, stated that the Oregon renewable portfolio standard revisions "incent early action through its REC banking provision, which allows utilities and customers to benefit from recently extended federal tax credits. HB 4036 enables at least **225 MW** of additional low-cost renewable procurement **over the near-term.**"¹⁶ Similarly, PacifiCorp informed the Commission at its January 29, 2016 hearing regarding the RPS revisions that the bill would provide PacifiCorp "an opportunity to procure over **600 MW** of low-cost renewable resources **over the near-term.**"

PacifiCorp's proposed 2028 date for the acquisition of a new thermal resource is also likely to be inaccurate. For example, PacifiCorp's IRP included a sensitivity case for complying with the Clean Power Plan and high carbon regulation, which included a 2024 thermal resource acquisition.¹⁷ An even more restricted Clean Power Plan compliance would result in a 2020 year of deficiency.¹⁸ The passage SB 1547 may also accelerate the need for new gas resources. While it is unclear what actions PacifiCorp will take in response to the requirement to remove the costs of coal from Oregon rates, one possible action is to reduce reliance upon these resources and more quickly shift to natural gas. Similarly, the need to acquire more renewable resources will likely accelerate the company's plans to replace coal with more flexible gas generation. In the end, PacifiCorp is not likely to wait until 2028 to construct or acquire its next major gas resource.

3. The Parties Should Have an Opportunity to Review Other Avoided Cost Inputs and Assumptions

PacifiCorp's avoided cost update has only recently been filed, and the company included cursory supporting information, as there are no minimum filing requirements applicable to IRPs at this time. For example, the company's forecast for market prices during the sufficiency period is lower than any time in recent memory. The parties and

¹⁵ Re PacifiCorp 2015 IRP, Docket No. LC 62, Order No. 16-071 (Feb. 29, 2016).

¹⁶ Testimony of Scott Bolton to the House Energy and Environment Committee (SB 1547 was originally HB 4036).

¹⁷ Re PacifiCorp 2015 IRP, Docket No. LC 62, Attachment K at 152.

¹⁸ Id.

Staff should have an opportunity to “look under the hood” to verify that these inputs and assumptions are correct.

4. The Issue of PacifiCorp’s Year of Deficiency Could Be Litigated in an IRP Update Filing rather than an Avoided Cost Rate Proceeding

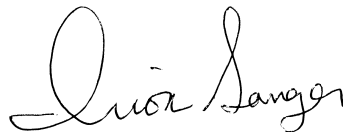
PacifiCorp is required to file an update in its IRP now that SB 1547 has become law. The Commission’s IRP guidelines require PacifiCorp to file an update “[a]s soon as an energy utility anticipates a significant deviation from its acknowledged IRP . . .”¹⁹ At a minimum, this IRP update will need to review whether PacifiCorp’s action plan should include the acquisition of new renewable resources in the near term.

The Joint QF Parties believe consideration of the year of deficiency should more appropriately be considered in this IRP update. PacifiCorp’s resource plans will impact more than just QFs, and all interested parties should participate in this process. A parallel avoided cost rate filing reviewing the exact same issue would be unnecessarily duplicative and a waste of Commission and interested party resources, if the Commission commits to resolving the issue in the IRP update proceeding.

5. Conclusion

PacifiCorp’s avoided cost rate update results in a significant reduction in avoided cost rates, which do not accurately estimate the company’s expected resource costs. The Commission’s process in its administrative rules and orders is to allow Staff, QFs, and interested parties an opportunity to review these rates before they take effect. Therefore, the Joint QF Parties request that the Commission suspend the rates and, at a minimum, review the proposed resource sufficiency and deficiency demarcation before the rates take effect.

Sincerely,



Irion A. Sanger

On behalf of the Renewable Energy Coalition, the
Community Renewable Energy Association, and Obsidian
Renewables

¹⁹ OAR § 860-027-0400(9).