

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1729

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER,)	COMMUNITY RENEWABLE
)	ENERGY ASSOCIATION AND
Application to Update Schedule 37)	RENEWABLE ENERGY
Qualifying Facility Information)	COALITION’S RESPONSE TO
)	STAFF’S ALTERNATIVE
)	EMERGENCY MOTION
_____)	

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”) and the Renewable Energy Coalition (“Coalition”) (“Joint QF Parties”) file this response to Staff’s filing made on May 11, 2018, titled “Staff’s Response to PacifiCorp Motion for Emergency Interim Relief.” In that filing, Staff has, in effect, moved for emergency changes to longstanding Oregon Public Utility Commission (“OPUC” or “Commission”) policies implementing the Public Utility Regulatory Policies Act of 1978 (“PURPA”) in a manner that is materially different from the emergency motion initially submitted by PacifiCorp concurrently with PacifiCorp’s application to update its Schedule 37 qualifying facility (“QF”) information. Staff’s new proposal presents new issues and necessitates additional response to the new proposal.

Staff proposes to immediately repeal the longstanding Oregon policy that any QF that is considered to be a renewable resource under Oregon’s Renewable Portfolio Standard (“RPS”) should be offered two avoided cost rate options. Those options are: (1)

the traditional rate option available since enactment of PURPA in 1978 where the QF sells only its energy and capacity at costs approximating the utility's avoided conventional generation, while the QF retains all non-energy attributes (such as renewable energy credits, or "RECs"); *or* (2) the renewable rate option first implemented in 2011 whereby an RPS-compliant QF sells its energy, capacity, and RECs at costs approximating the utility's next planned renewable generation. Staff proposes that QFs that are also RPS compliant may not sell under the traditional rate option that has been continuously available to all QFs for the past four decades.

As explained in more detail below, the Commission should deny Staff's proposal for the following reasons:

- *First*, Staff's proposal would penalize QFs for constructing and operating their facilities in a manner that is RPS compliant – encouraging QFs to take actions that would preclude them from being RPS compliant, such as operating a hydropower facility in an environmentally unsound manner or combusting polluting forms of waste instead of with an RPS-complaint form of biomass. This proposal therefore contradicts Oregon energy policy.
- *Second*, Staff's proposal would violate the Federal Energy Regulatory Commission's ("FERC") PURPA in at least two ways: (1) it would deprive QFs of the ability to sell their energy and capacity at the avoided costs of the utility's conventional generation, and (2) it would

unlawfully condition the sale of energy and capacity from RPS-compliant QFs on conveyance of RECs to the utility.

- *Third*, Staff’s proposal relies on the factually incorrect premise that PacifiCorp’s renewable avoided costs are lower than its non-renewable avoided costs. Indeed, the minimal difference between the two price streams calculated by PacifiCorp would likely disappear if PacifiCorp were to properly include transmission costs in its renewable avoided costs, as Staff agrees PacifiCorp must do;¹ and the difference will unquestionably disappear in any event as soon as federal tax credit expires for new wind plants in the very near future.²
- *Fourth*, Staff’s proposal is made in the absence of any evidentiary support because PacifiCorp has refused to respond to reasonable data requests seeking to understand whether an emergency actually exists. There is no basis for emergency action where PacifiCorp’s non-renewable rates are currently so low that it is highly unlikely that many QFs are seeking to contract with the Company, and PacifiCorp has not provided any evidence of harm.

¹ Staff supports including the costs of Wyoming transmission necessary to transmit new Wyoming wind to load. *See Staff Report*, Docket No. UM 1729 (May 17, 2018).

² Both the production tax credit (“PTC”) and the investment tax credit (“ITC”) are set to decline in 2019. The PTC is reduced by 60% and the ITC is reduced to 30%. The sunset provisions of these federal tax credits call into question whether PacifiCorp’s next renewable resource acquisition will result in lower avoided cost rates than its next non-renewable resource acquisition.

Accordingly, the Commission should promptly reject both PacifiCorp's proposal and Staff's alternative proposal without opening any further investigation that will drain all of the stakeholders' resources for no meaningful purpose.

II. ARGUMENT

A. Staff's Proposal Would Encourage a Shift to Development of Polluting QF Technologies, in Direct Contradiction to Oregon Energy Policy

In effect, Staff's proposal would penalize QFs for being RPS compliant and encourage both existing and new QFs to take action to not qualify as renewable under Oregon's RPS. That would be the logical and rational result if the Commission were to provide an RPS-compliant QF with lower avoided cost rates than a similarly situated QF that is not RPS compliant. Thus, Staff's proposal would encourage QFs to take actions that would preclude them from being RPS compliant.

The impact of this effect is not merely hypothetical. For example, to remain in operation, legacy hydropower facilities operating since before 1995 often seek to obtain certification by the Low Impact Hydropower Institute to become RPS compliant under ORS 469A.020(4)(b). However, under Staff's proposal, such a QF would now be incented to take actions to cease operating in the environmentally sound manner required to maintain such certification to qualify for higher avoided cost rates. Likewise, either an existing or planned QF could switch from combusting an RPS-complaint form of biomass under ORS 469A.025(2) to combusting a less clean fuel, such as industrial garbage or used tires to qualify for higher avoided cost rates. Such a facility would become "non-renewable" under Oregon's RPS law but nevertheless qualify as a QF using waste under PURPA. *See* 18 CFR §§ 292.202(b) and 292.204(b).

In contrast, under the Commission’s current policy, a QF always has an incentive to construct and operate its facility in a manner that complements the policy directives of Oregon’s RPS. To date, the renewable avoided cost rates have been higher than the non-renewable rates. In that circumstance, the QF has the incentive to operate in compliance with the RPS to obtain the higher rate. On the other hand, if the renewable rate is lower than the non-renewable rate (which is a disputed point in this case), then the QF still has the incentive to maintain RPS compliance even if it elects to sell under the non-renewable rate because the QF can separately sell its RECs. Thus, the Commission’s current policy incents the use of renewable resources regardless of whether QFs choose the renewable or non-renewable rate.

Yet Staff’s proposal upends the consistent direction of Oregon’s energy law and policy. The obvious intent of Oregon’s RPS law is to *encourage* development of facilities that meet the strict definitions of renewable energy in the law. A policy that penalizes construction of such facilities violates the intent of the legislature. Oregon law further requires that “by the year 2025, at least eight percent of the aggregate electrical capacity of” PacifiCorp and Portland General Electric Company (“PGE”) “*must* be composed of electricity generated by . . . (a) [s]mall-scale renewable energy projects with a generating capacity of 20 megawatts or less that generate electricity utilizing” an RPS-eligible renewable resource, “or (b) [f]acilities that generate electricity using biomass that also generate thermal energy for a secondary purpose.” ORS 469A.210(2) (emph. added). PURPA remains the most significant policy that is making progress towards this requirement, and Staff’s proposal will undermine that legislative objective.

Moreover, contrary to Staff’s proposal, Oregon law specifically mandates that this Commission should increase the marketability of QFs, ORS 758.515(3), not *reduce* the options available to them. The purpose of the Commission’s adoption of an additional renewable rate stream was obviously in keeping with legislative directives to encourage development of small power production facilities that are RPS compliant. *See In the Matter of Pub. Util. Comm’n of Or., Investigation Into Resource Sufficiency Pursuant to Order No. 06-538, Docket No. UM 1396, Order No. 11-505 (Dec. 13, 2011).*

Staff and PacifiCorp misread the Commission’s renewable rate order. They both suggest that the sole reason to provide a choice between two rate options was “to ensure that baseload renewable QFs would be able to select prices based on a generator with similar characteristics.” *Staff’s Response to Emergency Motion* at 4 (May 11, 2018) (citing *In the Matter of Pub. Util. Comm’n of Or., Investigation Into Resource Sufficiency Pursuant to Order No. 06-538, Order No. 11-505* at 9). But the order does not state that.

In full context, the order first explained the issue proposed by PacifiCorp:

“Pacific Power also proposes that a renewable QF should not be allowed to choose the standard avoided cost rate if it is higher than the renewable rate. ICNU and Staff oppose this recommendation. ICNU argues that, from a practical perspective, this would mean that renewable QFs would have only one real option: the renewable avoided cost rate.”

Id. In response, the order did not state QFs should have the choice *solely* to protect baseload renewable QFs. Instead, the Commission explained:

“Allowing a renewable QF to choose between the two avoided cost streams is consistent with FERC’s ruling that clarified the right of the states to determine the avoided cost associated with utility purchases of energy ‘from generators with certain characteristics.’ Renewable QFs willing to sell their output and cede their RECs to the utility allow the utility to avoid building (or buying) renewable generation to meet their

RPS requirements. These QFs should be offered an avoided cost stream that reflects the costs that utility will avoid.”

Id. The order also explains that denial of a choice between the two rate streams “would be contrary to our decision above to allow the renewable QF to choose the standard avoided cost rate to better reflect the value of a base load renewable resource.” *Id.* But that was not the sole basis for adoption of the existing policy, which was expressly adopted to provide an additional option to RPS-complaint QFs who are “willing” to “cede their RECs” as allowed by a contemporaneous FERC order. *Id.*

The obvious intent of the renewable rate order was to expand the options offered to QFs consistent with the FERC order cited in the Commission’s renewable rate order, *Cal. Pub. Util. Comm’n*, 133 FERC ¶ 61,059, at PP 21-26 (Oct. 21, 2010). The proposal approved in the FERC order was to develop a “multi-tiered” avoided cost rate, where the state may offer an *additional* rate option to QFs that meet certain state law procurement requirements. *Id.* FERC explained that “just as a state may take into account the cost of the next marginal unit of generation, so as well the state may take into account obligations imposed by the state that, for example, utilities purchase energy from particular sources of energy or for a long duration.” *Id.* at P 26. FERC thus allowed state commissions to offer an additional rate option to those QFs possessing characteristics that state law chose to promote, such as generating energy from renewable sources. Consistent with Oregon law and policy, the Commission adopted that policy.

Additionally, Staff’s proposal would require a rulemaking to change Oregon law in contradiction to the legislature’s intent. By administrative rule adopted in 2005, an Oregon QF retains the RECs under the gas-fired proxy rates or the alternative market

rates unless the QF agrees to convey its RECs to the utility. *See* OAR 860-022-0075(2). That was the case when Oregon first enacted its RPS statute in 2007, and the Oregon legislature therefore implicitly affirmed the Commission's policy by not altering the Commission's rule. The Commission would undo this policy if it were to now implement a new, lower avoided cost stream as the sole option under which wind, solar or other RPS-compliant QFs must cede the RECs to the utility for the privilege of exercising federal PURPA rights.

In sum, Staff's proposal turns Oregon policy on its head by punishing generators that are RPS compliant with lower avoided cost rates. Although a number of states have declined to adopt any RPS program, the Joint QF Parties are unaware of any state that has actively encouraged a switch to non-renewable resources in the manner Staff proposes here. The Commission need not even reach the legal and factual questions discussed below because the policy forwarded by Staff's proposal is untenable.

B. Staff's Proposal Violates PURPA

Staff's proposal would violate PURPA in at least two related ways. First, it would deprive QFs of the ability to sell their energy and capacity at the avoided costs of the utility's conventional generation, in effect discriminating against RPS-compliant QFs. Second, the proposal would illegally condition the RPS-compliant QFs' right to receive avoided cost rates on their agreement to convey their non-energy RECs to the utility.

As to the first point, FERC's regulations require that the each QF be offered a long-term rate that reasonably reflects the purchasing utility's avoided costs of energy and capacity. 18 CFR § 292.304(d)(2). Staff's own filing demonstrates that the existing

mechanism for calculating non-renewable rates is a reasonable method of calculating the utility's avoided cost of energy and capacity. In Staffs' words, "the Commission has discretion to establish standard avoided cost rates using a [gas-fired] proxy resource[.]" and "it is not clear that the price stream based on market prices until 2030 and a proxy CCCT thereafter, violates the ratepayer indifference standard." *Staff's Response to Emergency Motion* at 6-7. Indeed, "PacifiCorp is planning to acquire a CCCT in 2030." *Id.* Thus, the starting point here is that the existing non-renewable rate method is a lawful method of calculating avoided costs of energy and capacity.

Given that Staff agrees the non-renewable rate properly reflects PacifiCorp's avoided costs, there is no lawful basis to simultaneously propose to deny access to that avoided cost method to the subset of QFs based on their compliance with Oregon's RPS law. FERC's regulations allow the Commission to adjust those gas proxy avoided costs to account for the supply characteristics of the QFs' energy and capacity, such as reduced capacity value of QF wind power as compared to the proxy gas-fired plant. 18 CFR § 292.304(e)(2). The Commission has in fact done so. But FERC's regulations do not allow the Commission to offer a lower rate solely because the QF complies with a state RPS law, as Staff proposes here.

Indeed, a federal district court in California recently invalidated the California Public Utility Commission's ("CPUC") implementation of PURPA for a similar violation. *See Winding Creek Solar LLC v. Peevey*, Case No. 3:13-cv-04934-JD, 2017 U.S. Dist. LEXIS 201893 (N.D. Cal. Dec. 6, 2017), *appeal pending* Ninth Circuit Court of Appeals Nos. 17-17531 & 17-17532. In *Winding Creek*, the CPUC's Renewable

Market-Adjusting Tariff (“Re-MAT”) program offered certain small renewable QFs a renewable rate calculated through a complex reverse auction price initially based on the successful bid in a renewable procurement. *Id.* at **12-17. The plaintiff argued that the Re-MAT program pricing mechanism could not satisfy all of PURPA’s requirements on its own. The court agreed and held that the Re-MAT program’s pricing strayed too far from the concept of avoided costs to satisfy FERC’s requirements on its own.³ The court reasoned “it would make sense to look to a spot market price or similar indicator for electricity” to meet FERC’s definition of avoided cost. *Id.* at *25-26.

The court indicated it would have affirmed use of the Re-MAT program as an alternative program if the CPUC also had another program that met all of PURPA’s requirements and was available to the plaintiff. *See id.* at *27. The CPUC pointed to its “standard contract” based on gas-fired plant avoided costs, which was available to renewable and non-renewable QFs, including the plaintiff. *Id.* at **26-34. But that standard contract did not include a long-term fixed-price rate. *Id.* Therefore, the court found that the CPUC had offered no fully compliant avoided cost program. *Id.* In sum, although this ruling is somewhat unclear on the point and is now on appeal, it calls into question whether a renewable-based price can be the *only* price offered under PURPA.

The *Winding Creek* decision is a cautionary tale for the Commission here. The CPUC could have avoided having its implementation of PURPA invalidated if it had

³ The court also held that the Re-MAT program’s participation caps precluded the Re-MAT program from satisfying all of PURPA’s requirements in the absence of a backstop avoided cost stream that was not subject to such caps. *Id.* But that holding on participation caps is not directly relevant here.

simply offered a fully compliant non-renewable avoided cost rate to all QFs, while making the additional Re-MAT offering available to certain QFs that qualified for that program under state law. *See id.* at *27. FERC has itself stated that as long as a state provides each QF the opportunity to enter into a contract that meets all of its PURPA’s requirements, the state may offer an alternative program to a limited set of QFs. *See Otter Creek Solar, LLC*, 143 FERC ¶ 61,282, at P 4 (June 27, 2013), *reconsid. denied*, 146 FERC ¶ 61,192 (2014). The Commission should not, therefore, eliminate the backstop offering of a long-term non-renewable avoided cost rate.

The second way Staff’s proposal violates PURPA is by conditioning the federal right to sell under PURPA upon the QF’s agreement to convey its RECs to the utility. PURPA requires the utilities to purchase energy and capacity from any QF, but PURPA does not require the QF to provide the utility with its RECs or any other non-energy attribute as a condition of selling its energy or capacity. FERC recently confirmed that all QFs must be offered the option to sell just their energy and capacity, without their non-energy attributes, at a traditional avoided cost rate. *See Windham Solar LLC*, 156 FERC ¶ 61,042, at P 4 (July 21, 2016).

In *Windham Solar*, the Connecticut Public Utility Regulatory Authority required QFs “either to offer a bundled product that includes renewable energy credits (RECs), or to sell energy pursuant to short-term contracts.” *Id.* at P 3. As in the *Winding Creek* case, there was no long-term non-renewable rate option offered to all QFs. In effect, “under Connecticut law, a QF that has already separately sold its RECs cannot now sell energy and capacity pursuant to a legally enforceable obligation at avoided cost rates

calculated at the time the obligation is incurred.” *Id.* This violates PURPA, as FERC concluded. While “states have the authority to regulate RECs, states cannot impede a QF’s ability to sell its output to an electric utility pursuant to PURPA.” *Id.* at P 4. “[R]egardless of whether a QF has previously sold its RECs under a separate contract, that QF has the right to sell its output pursuant to a legally enforceable obligation.” *Id.* In response to this FERC order, Connecticut opened a proceeding to correct the flaw by offering a long-term fixed-price rate available to all QFs, even those that do not convey their RECs to the utility. *See Petition of Windham Solar LLC*, Docket No. 16-03-08RE01, 2018 Conn. PUC LEXIS 50 at ** 6-13 (Jan 10, 2018).

The OPUC’s implementation of PURPA will suffer from the same flaws under either PacifiCorp’s or Staff’s proposal. The RPS-compliant QF will be required to convey its RECs to the utility to receive a long-term avoided cost contract. This will present practical problems for Oregon QFs and will certainly lead to the same type of disputes as in Connecticut.

This is not a hypothetical problem. Imagine for example an RPS-compliant QF currently selling under a non-renewable contract that has sold a forward strip of its RECs to a third party. That QF will no longer possess its RECs to sell to the utility and will therefore be ineligible for the renewable rates when its current contract expires – leaving it *no* avoided cost rate option under Staff’s proposal.

In short, Staff’s proposal violates PURPA and should be rejected for that reason.

C. Staff’s Proposal Has No Factual Merit

Even if Staff’s proposal were consistent with PURPA, the factual premise underlying the proposal is incorrect. The underlying assumption, and indeed the need for *emergency* relief, is PacifiCorp’s incorrect factual assertion that its avoided costs of renewable generation are less than its avoided costs of conventional generation. Staff accepts this factual assertion and proposes the Commission immediately act on it. There are several reasons not to do so.

First, even accepting PacifiCorp’s assertions, the disparity in the rates it proposes is not so great as to warrant complete overhaul of the Commission’s implementation of PURPA. The Joint QF Parties have reproduced a table of the disparity in proposed avoided cost rates from Staff’s Report.

Table 1: Difference Between PacifiCorp Proposed Renewable and Non-Renewable Prices (per MWh)⁴

Resource Type	Baseload	Wind	Fixed Solar	Tracking Solar
Proposed Renewable Prices	\$35.52	\$31.02	\$39.31	\$40.07
Proposed Non-Renewable Prices	\$40.19	\$36.67	\$45.67	\$46.10
Difference	\$4.67	\$5.65	\$6.36	\$6.03

The alleged difference between the two price streams is relatively minimal, even as proposed by PacifiCorp. It is certainly not so large as to make the non-renewable rates

⁴ Data taken from the Staff Report, which states these prices reflect 15 years of fixed payments starting in 2020, using the 2017 IRP’s discount rate.

attractive enough for any significant amount of QF development. None of the rates in the table are going to result in significant QF development. Indeed, given the statutory directives above, the Commission should be encouraging all of the carbon-free, renewable energy it can at the non-renewable rates in the above table.

Furthermore, the rates and the difference between the two rate streams are still just *proposed* rates. The difference in the two rate streams would likely disappear altogether if PacifiCorp were to properly include transmission costs in its renewable avoided costs, as discussed in the Joint QF Parties' comments on PacifiCorp's compliance filing. Staff agrees with the Joint QF Parties that PacifiCorp's has underestimated its renewable avoided costs by excluding the transmission costs, and it recommends that PacifiCorp be directed to increase its proposed rates before they become effective. *Staff's Report*, Docket No. UM 1729 (May 17, 2018). The Joint QF Parties believe that properly included transmission costs will eliminate the rate disparity giving rise to the alleged emergency. However, it is impossible to fully evaluate the question at this time because PacifiCorp has refused to respond to data requests lodged by the Joint QF Parties, which included a request that PacifiCorp provide its renewable avoided costs with the Wyoming transmission costs. *See Attachment A (PacifiCorp's Response to CREA's Data Requests)*.

Additionally, even without transmission, the alleged disparity will completely disappear as soon as the production tax credit expires for new renewable plants in the very near future. The production tax credit has an impact of \$19.87/MWh to 28.11/MWh, depending on the year, in PacifiCorp's renewable rate model work papers

for its wind proxy attached to its compliance filing. In other words, the renewable rates in the table above will soon be roughly \$20/MWh higher. At that point, the renewable rates will be far higher than the non-renewable rates, eliminating the factual premise underlying Staff's proposal. In fact, the time-limited nature of the federal tax credits and the resulting low costs of renewables was the entire basis for PacifiCorp expedited request for proposals in Docket No. UM 1845.

In sum, therefore, the rate disparity is minimal even under PacifiCorp's proposed rates and the disparity will end either when the Commission approves final rates or during the next rate cycle when the tax credit is gone. If Staff's proposal is not factually moot already, it will be so very soon. The Commission should not upend its PURPA policies on this temporary and wholly unsupported factual record.

D. PacifiCorp Should Not Be Rewarded for Refusing to Provide Information Supporting the Alleged Emergency

PacifiCorp's refusal to support its own claims with responsive discovery further undermines the proposals for emergency relief. Staff's proposal overlooks that PacifiCorp should not be permitted to avail itself of emergency motions without providing a modicum of evidentiary support for its claims in discovery, as is ordinary practice at the Commission when an emergency motion is filed.

As noted above, CREA filed two narrowly tailored data requests designed to ascertain whether there is in fact a rate disparity and whether PacifiCorp is also asking to repeal the Commission's administrative rule that the QF retains ownership of its RECs absent an agreement otherwise. *See* Attachment A (PacifiCorp's Response to CREA's Data Requests). The Coalition also sought information from PacifiCorp to understand

how its proposal would impact non-renewable QFs, and to understand the basis for the Company's request for emergency relief. *Id.* For example, if there are not any renewable QFs even requesting non-renewable rates from PacifiCorp, there is no basis for a significant change in policy on an emergency basis, as opposed to after a full evidentiary hearing.

PacifiCorp has not supplied any evidence speaking to these factual issues in response to discovery requests. According to PacifiCorp, because this is not a "contested case," it need not respond to discovery. *See* Attachment A. Curiously, PacifiCorp nevertheless seeks to avail itself of the right to file an emergency "motion," which is a pleading provided for only in the Commission's rules governing contested case or declaratory ruling proceedings. OAR 860-001-0420. The Commission should not allow for such emergency relief without any vetting of the alleged harm.

The Commission's long-held policy has been to encourage utilities to provide information in avoided cost dockets, especially where the utility is simultaneously seeking emergency relief from longstanding policies. In the last three "emergency" PURPA filings by utilities (Idaho Power's UM 1725, PacifiCorp's UM 1734, and PGE's UM 1854), the utility proposing emergency relief responded to discovery lodged by QF parties and Staff. In the past, when the Commission has issued emergency relief it has done so based on significant claims of immediate harm from the utilities and has ensured the relief is "narrow, targeted, and proportionate" to the proven harm. *See In the Matter of Idaho Power Applications to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Change, and for Change*

in Resource Sufficiency Determination, Docket No. UM 1725, Order No. 15-199 at 7 (June 23, 2015). Here, in contrast, PacifiCorp has refused to provide any factual support of harm, and it is impossible to narrowly tailor any relief.

Even in the absence of a request for emergency relief, the Commission typically does not allow avoided cost updates to go into effect where additional time is needed for stakeholder review of utility assertions. After the passage of Senate Bill 1547, the Commission delayed the effectiveness of PacifiCorp's Schedule 37 update because "Staff requires additional time for its review, and because other parties should have the opportunity to challenge IRP inputs." *In the Matter of PacifiCorp, dba Pacific Power, Investigation Into Schedule 37 Avoided Cost Purchases from QFs*, Docket No. UM 1729(1), Order No. 16-117 at Appendix A at 5 (Mar. 23, 2016). Shortly afterwards, the Commission opened a separate expedited contested case proceeding to allow a more thorough vetting of PacifiCorp's Schedule 37 update. *In the Matter of PacifiCorp, dba Pacific Power, Investigation Into Schedule 37 Avoided Cost Purchases from QFs*, Docket No. UM 1729(1), Order No. 16-307 at 1 (Aug. 18, 2016).

In short, the Commission should not accept the vague allegations of harm that underly the Staff and PacifiCorp proposals where PacifiCorp is unable or unwilling to demonstrate those allegations are true through responsive discovery.

III. CONCLUSION

For the reasons stated above, the Joint QF Parties request that the Commission reject Staff's proposal to reverse this Commission's policies that provide eligible QFs with the choice between selling under non-renewable or renewable avoided cost rates.

The Joint QF Parties further request that the Commission deny the improperly presented requests to further investigate this issue.

Dated this 18th day of May 2018.

Respectfully submitted,

/s/ Gregory M. Adams

Gregory M. Adams (OSB No. 101779)
Peter J. Richardson (OSB No. 066687)
RICHARDSON ADAMS, PLLC
515 North 27th Street
Boise, ID 83702
Telephone: 208-938-7900
Fax: 208-938-7901
greg@richardsonadams.com
peter@richardsonadams.com

Of Attorneys for the Community Renewable
Energy Association

/s/ Irion Sanger

Irion Sanger
Sidney Villanueva
SANGER LAW, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com
sidney@sanger-law.com

Of Attorneys for the Renewable Energy Coalition

UM 1729

**Joint QF Parties' Response Staff's Emergency Relief
Proposal**

ATTACHMENT A

CREA Data Request 1.1

Reference OPUC Order No. 18-138 at pp. 6-7, discussing PacifiCorp IRP Action Item 2A as a “new 140-mile, 500 kilovolt (kV) transmission line and associated infrastructure running from Aeolis substation near Medicine Bow, Wyoming, to a new annex substation, Bridger/Anticline, which will be located near the existing Jim Bridger substation (Aeolus to Bridger/Anticline line)”.

Please provide the renewable avoided costs as filed with the inclusion of capital and operating costs of the referenced Aeolus to Bridger/Anticline line as part of the Wyoming Wind resource acknowledged as Action Item 1A in the referenced order. Provide all work papers supporting the calculations.

Response to CREA Data Request 1.1

PacifiCorp objects to this data request because data requests and other discovery are not permitted in non-contested cases. In Order No. 16-117, the Commission ordered PacifiCorp, Staff, and stakeholders to begin an expedited, non-contested case process to resolve PacifiCorp’s avoided cost update. Under the Commission’s rules, discovery is only permitted in contested cases. *See* OAR 860-001-0500. Furthermore, only persons with “party” status may propound data requests. OAR 860-001-0540(1). A “party” is defined as a person “entitled as a matter of right to a hearing before the Commission.” Because this docket is a non-contested case, CREA is not entitled to a hearing, does not have “party” status, and has no right to propound data requests.

Without waiving the above objection and treating this request as an informal data request, PacifiCorp further responds that this data request requires the development of new information and analysis and is inconsistent with the requirements of OAR 860-001-0500 (4).

CREA Data Request 1.2

Reference OAR 860-022-0075(2), stating “Unless otherwise agreed to by separate contract, the owner of the renewable energy facility retains ownership of the non-energy attributes associated with electricity the facility generates and sells to an electric company pursuant to: . . . (b) An Oregon contract with the electric company entered into pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978 . . .”.

With regard to PacifiCorp’s proposal to use the renewable avoided cost rates for all QFs, please explain how this would comply with the Commission’s rule that QFs may elect to retain ownership of their renewable energy credits and sell only their energy and capacity.

Response to CREA Data Request 1.2

PacifiCorp objects to this data request because data requests and other discovery are not permitted in non-contested cases. In Order No. 16-117, the Commission ordered PacifiCorp, Staff, and stakeholders to begin an expedited, non-contested case process to resolve PacifiCorp’s avoided cost update. Under the Commission’s rules, discovery is only permitted in contested cases. *See* OAR 860-001-0500. Furthermore, only persons with “party” status may propound data requests. OAR 860-001-0540(1). A “party” is defined as a person “entitled as a matter of right to a hearing before the Commission.” Because this docket is a non-contested case, CREA is not entitled to a hearing, does not have “party” status, and has no right to propound data requests.

PacifiCorp further objects to this data request as inappropriately requiring legal argumentation and a legal conclusion. Without waiving any of the foregoing objections, please see the Motion for Emergency Interim Relief filed by PacifiCorp on April 26, 2018.

Sanger Law PC

1117 SE 53rd Ave. Portland, OR 97215

tel (503) 756-7533 fax (503) 334-2235 irion@sanger-law.com

May 7, 2018

Via Electronic Mail

Etta Lockey
Pacific Power
825 NE Multnomah St, Suite 2000
Portland OR 97232
Etta.lockey@pacificorp.com

Dustin Till
Pacific Power
825 NE Multnomah St, Suite 1800
Portland OR 97232
dustin.till@pacificorp.com

Oregon Dockets
825 NE Multnomah St, Suite 2000
Portland OR 97232
oregondockets@pacificorp.com

Re: In the Matter of PACIFICORP, dba PACIFIC POWER, Application to Update Schedule
37 Qualifying Facility Information.
Docket No. UM 1729

Dear Ms. Lockey:

Please find Renewable Energy Coalition's second set of data requests to Pacific Power in this proceeding. Given that PacifiCorp has asked that the Oregon Public Utility Commission approve its avoided cost update at the May 22 Public Meeting, please respond to these data requests by Thursday May 10, 2018.

Please provide your responses via email to Irion Sanger (irion@sanger-law.com), and John Lowe (jravenesanmarcos@yahoo.com) and hard copies to Mr. Sanger at the address above, and Mr. Lowe at Renewable Energy Coalition, 88644 Hwy. 101, Gearhart, OR 97138. Please only provide confidential responses to myself.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Irion A. Sanger
Irion A. Sanger

When used with respect to a document, stating the nature of the document (e.g., letter, memorandum, corporate minutes); the date, if any, appearing thereon; the date, if known, on which the document was prepared; the title of the document; the general subject matter of the document; the number of pages comprising the document; the identity of each person who wrote, dictated, or otherwise participated in the preparation of the document; the identity of each person who signed or initiated the document; the identity of each person to whom the document was addressed; the identity of each person who received the document or reviewed it; the location of the document; and the identity of each person having possession, custody, or control of the document.

When used with respect to a person, stating his or her full name; his or her most recently known home and business addresses and telephone numbers; his or her present title and position; and his or her present and prior connections or associations with any participant or party to this proceeding.

3. “Pacific Power” or “PacifiCorp” refers to Pacific Power, PacifiCorp, any affiliated company, or any officer, director or employee of Pacific Power, or any affiliated company, and including employees of both PacifiCorp Energy Management Services (“ESM”) and PacifiCorp Transmission unless otherwise restricted in the request.
4. “Person” refers to, without limiting the generality of its meaning, every natural person, corporation, partnership, association (whether formally organized or ad hoc), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency, or any other group or organization.
5. “Studies” or “study” includes, without limitation, reports, reviews, analyses and audits.
6. The terms “and” and “or” shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of this discovery any information or documents which might otherwise be considered to be beyond their scope.
7. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular, whenever appropriate in order to bring within the scope of this discovery request any information or documents which might otherwise be considered to be beyond their scope.

II. INSTRUCTIONS

1. These requests call for all information, including information contained in documents, which relate to the subject matter of the Data Request and which is known or available to you.
2. Where a Data Request has a number of separate subdivisions or related parts or portions, a complete response is required to each such subdivision, part or portion. Any objection

to a Data Request should clearly indicate the subdivision, part, or portion of the Data Request to which it is directed.

3. The time period encompassed by these Data Requests is from 2005 to the present unless otherwise specified.
4. Each response should be furnished on a separate page. In addition to hard copy, electronic versions of the document, including studies and analyses, must also be furnished if available.
5. If you cannot answer a Data Request in full, after exercising due diligence to secure the information necessary to do so, state the answer to the extent possible, state why you cannot answer the Data Request in full, and state what information or knowledge you have concerning the unanswered portions.
6. If, in answering any of these Data Requests, you feel that any Data Request or definition or instruction applicable thereto is ambiguous, set forth the language you feel is ambiguous and the interpretation you are using in responding to the Data Request.
7. If a document requested is unavailable, identify the document, describe in detail the reasons the document is unavailable, state where the document can be obtained, and specify the number of pages it contains.
8. If you assert that any document has been destroyed, state when and why it was destroyed and identify the person who directed the destruction. If the document was destroyed pursuant to your document destruction program, identify and produce a copy of the guideline, policy, or company manual describing such document destruction program.
9. If you refuse to respond to any Data Request by reason of a claim of privilege, confidentiality, or for any other reason, state in writing the type of privilege claimed and the facts and circumstances you rely upon to support the claim of privilege or the reason for refusing to respond. With respect to requests for documents to which you refuse to respond, identify each such document, and specify the number of pages it contains. Please provide: (a) a brief description of the document; (b) date of document; (c) name of each author or preparer; (d) name of each person who received the document; and (e) the reason for withholding it and a statement of facts constituting the justification and basis for withholding it.
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14. To the extent that the Company believes it is burdensome to produce specific information requested, please contact Renewable Energy Coalition to discuss the problem prior to filing an answer objecting on that basis to determine if the request can be modified to pose less difficulty in responding.
15. To the extent the Company objects to any of the requests please contact Renewable Energy Coalition to determine if the request can be modified to produce a less objectionable request.

III. SECOND SET OF DATA REQUESTS:

- 2.1 Please refer to PacifiCorp's Motion for Emergency Interim Relief at 10, which states: "the Commission should restrict all QFs to receive renewable avoided cost prices". Please confirm that:
 - a. Not all hydroelectric qualifying facilities qualify for the Oregon renewable portfolio standard.
 - b. Not all biomass facilities qualify for the Oregon renewable portfolio standard.
 - c. Cogeneration facilities do not qualify for the Oregon renewable portfolio standard.
- 2.2 Please refer to PacifiCorp's Motion for Emergency Interim Relief at 10, which states: "the Commission should restrict all QFs to receive renewable avoided cost prices". What rate will be paid to hydroelectric, biomass and cogeneration facilities that do not qualify for the Oregon renewable portfolio standard?
- 2.3 Please identify all Oregon hydroelectric facilities, and state whether they are:
 - a. Low impact hydro certified;
 - b. Qualifying facilities;
 - c. Selling power to PacifiCorp; and
 - d. Eligible to sell power under Oregon's renewable portfolio standard.

2.4 Please refer to PacifiCorp's Motion for Emergency Interim Relief at 16, which states: "if the Commission grants PacifiCorp's relief immediately, and then ultimately approves higher avoided cost prices, any contract executed in the interim can be modified to reflect the higher prices." Is it PacifiCorp's position that any qualifying facility can modify its current power purchase agreement to reflect the higher rates when the rates exceed those in its current power purchase agreement? If not, please explain when it is appropriate and under what conditions PacifiCorp believes that a QF contract can be modified to reflect the higher and then current rates.

Sanger Law PC

1117 SE 53rd Ave. Portland, OR 97215

tel (503) 756-7533 fax (503) 334-2235 irion@sanger-law.com

May 15, 2018

Via Electronic Mail

Etta Lockey
Pacific Power
825 NE Multnomah St, Suite 2000
Portland OR 97232
Etta.lockey@pacificorp.com

Dustin Till
Pacific Power
825 NE Multnomah St, Suite 1800
Portland OR 97232
dustin.till@pacificorp.com

Oregon Dockets
825 NE Multnomah St, Suite 2000
Portland OR 97232
oregondockets@pacificorp.com

Re: In the Matter of PACIFICORP, dba PACIFIC POWER, Application to Update Schedule
37 Qualifying Facility Information.
Docket No. UM 1729

Dear Ms. Lockey:

Please find Renewable Energy Coalition's third set of data requests to Pacific Power in this proceeding. Given that PacifiCorp has asked that the Oregon Public Utility Commission approve its avoided cost update at the May 22 Public Meeting, please respond to these data requests by Thursday May 18, 2018.

Please provide your responses via email to Irion Sanger (irion@sanger-law.com), and John Lowe (jravenesanmarcos@yahoo.com) and hard copies to Mr. Sanger at the address above, and Mr. Lowe at Renewable Energy Coalition, 88644 Hwy. 101, Gearhart, OR 97138. Please only provide confidential responses to myself.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Irion A. Sanger
Irion A. Sanger

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III. THIRD SET OF DATA REQUESTS:

- 3.1 Please refer to pages 10-11 of PacifiCorp's Motion for Emergency Interim Relief, stating:

So long as the renewable avoided cost price stream is lower than the non-renewable avoided cost price stream, the Commission should depart from its past policy of allowing QFs to choose between the two avoided cost price streams. Instead, the Commission should restrict all QFs to receive renewable avoided cost prices, because these prices are the most accurate estimate of the costs PacifiCorp actually avoids.

- a. Is it PacifiCorp's position that if the renewable avoided cost price stream rises back above the non-renewable avoided cost price stream that the Commission should resume its policy of allowing QFs to choose between the two avoided cost price streams? Please explain.
 - b. Is it PacifiCorp's position that if the renewable avoided cost price stream is "most accurate estimate" of the costs PacifiCorp actually avoids if/when it is higher than the non-renewable avoided cost prices stream? Please explain.
- 3.2 Please refer to page 11 of PacifiCorp's Motion for Emergency Interim Relief, stating "If just ten standard solar QF projects totaling 30 MW were to execute [power purchase agreements ("PPAs")] based on the inflated non-renewable prices, customers would be saddled with approximately \$10 million in costs" Does PacifiCorp currently have ten standard solar QF (with projects totaling 30 MW) negotiating Schedule 37 PPAs? Please explain.

- 3.3 Please refer to page 15 of PacifiCorp’s Motion for Emergency Interim Relief, stating “The Commission should grant PacifiCorp interim relief to eliminate the *threat* that the company will be required to execute QF contracts....” (emphasis added). Is PacifiCorp alleging in its motion that relief should be granted due to actual harm or the threat of harm? Please explain.
- 3.4 Please indicate for 2014, 2015, 2016, 2017 and 2018 (to date):
- a. How many Schedule 37 PPA requests PacifiCorp received
 - b. How many Schedule 38 PPA requests PacifiCorp received
 - c. How many Schedule 37 contracts PacifiCorp executed
 - d. How many Schedule 38 contracts PacifiCorp executed
 - e. How many Schedule 37 projects reached commercial operations
 - f. How many Schedule 38 projects reached commercial operations
- 3.5 Please provide in electronic Excel format a list of each QF that requested a PPA since January 2015, indicating the size, resource type, location and name of each QF. For each QF, please indicate:
- a. Whether the QF entered into a PPA
 - b. When the QF’s PPA was executed
 - c. Whether the QF became commercially operational
 - d. The scheduled commercial operation date
 - e. The actual commercial operation date
 - f. Whether the QF is (or has been) in a load pocket
- 3.6 For each QFs listed above that have not become commercially operational, please identify:
- a. Whether the PPA has been terminated
 - b. What the expected commercial operation date is based on the best available information (e.g., communications with the QF, interconnection timelines, PPA amendment, etc.)
 - c. Whether PacifiCorp expects the QF to ultimately become commercially operational

- d. Whether the QF is (or has been) in a load pocket