BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1734

In the Matter of	)	
	)	JOINT RESPONSE OF OBSIDIAN
PACIFICORP d/b/a PACIFIC POWER	)	RENEWABLES, LLC; CYPRESS
	)	CREEK RENEWABLES, LLC;
Application to Reduce the Qualifying	)	RENEWABLE ENERGY
Facility Contract Term and Lower the	)	COALITION; COMMUNITY
Qualifying Facility Standard Contract	)	RENEWABLE ENERGY
Eligibility Cap	)	ASSOCIATION; AND
	)	OREGONIANS FOR RENEWABLE
	)	ENERGY PROGRESS IN
	)	OPPOSITION TO PACIFICORP'S
	)	MOTION FOR INTERIM RELIEF

I. Introduction

PacifiCorp has asked the Oregon Public Utility Commission to rescue it from an "extreme expansion of QF growth." As its only evidence, PacifiCorp refers to what it calls "an unprecedented increase in requests for long-term PPAs." To rectify the situation, PacifiCorp has asked the Commission to essentially preclude any future solar or wind QF development by slashing the eligibility threshold for a standard contract from 10MW to 100kw and by reducing the fixed-price contract term from 15 years to two.

So "extreme" and "unprecedented" is the danger, urges PacifiCorp, that it now asks the Commission to impose *interim* relief even before conducting an investigation. PacifiCorp wants the Commission to immediately reduce the eligibility threshold for standard contract to 3MW. It appears the Commission and its Staff have concluded, at least on a preliminary basis, that PacifiCorp has made a good faith showing of a serious problem. Obsidian Renewables LLC ("Obsidian"); Cypress Creek Renewables LLC ("Cypress Creek"); the Renewable Energy Coalition ("REC"); the Community Renewable Energy Association

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("CREA") and Oregonians for Renewable Energy Progress (collectively, the "Joint Parties") submit this joint response in opposition to PacifiCorp Motion for Interim Relief.

It is the job of the Commission to look past the hyperbole of PacifiCorp's allegations and ascertain the facts. The facts show that recent renewable QF development efforts are neither unprecedented nor extreme, and they are certainly not harmful to PacifiCorp's ratepayers.

- **Fact**: Not one single solar QF project of any significant size has been built in PacifiCorp's Oregon service territory in the last 15 years—if ever.

- **Fact**: At least 95 solar projects have requested interconnection service from PacifiCorp in the last 15 years. Of those, only one project has actually been built. It is only 2 MW, it is not a QF project, and it was built for PacifiCorp. A second project at 5 MW, not a QF, is under construction for completion at the end of this year. One small solar project in 2012, one small solar project in 2015, and neither is a QF.

- **Fact**: The current volume of PURPA contract requests is consistent with—even less than—the volume of interconnection requests that PacifiCorp has experienced in recent years for potential new renewable energy projects in its Oregon service territory.

- **Fact**: The 30% tax credit applicable to solar projects is scheduled to expire on December 31, 2016. The volume of PURPA contract applications for solar projects may have surged somewhat in anticipation of the change of law. Going forward, however, the volume of contract requests for solar QF projects is likely to plummet without intervention by the Commission.

- **Fact**: Since 2007, more than 215 renewable energy projects representing an aggregate capacity of 6,912 MW have sought interconnection service from PacifiCorp in Oregon. Of those, only 22 projects representing 80 MW of capacity have actually been built. By this data, just 10 percent of all renewable energy projects—representing only about 1.3 percent of all capacity—that seek interconnection from PacifiCorp in Oregon are actually built.

When the Commission looks beyond PacifiCorp's allegations to find the facts, it will see that there is absolutely no threat that PacifiCorp's Oregon service territory will be overrun by solar or other types of renewable QF development. The facts demonstrate that the

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Commission needs to do more to *stimulate* renewable power production rather than taking emergency action to stifle it.

II. The Relief Sought By PacifiCorp is Barred By The Stipulation In UM 1610.

As an initial matter, PacifiCorp is legally barred from seeking any relief in this docket on an interim basis or otherwise. As Obsidian, Cypress Creek, REC and others pointed out in support of a Motion to Dismiss to dismiss this proceeding, PacifiCorp recently executed a binding Stipulation in UM 1610. On April 16, 2015, the Commission issued Order No. 15-130 in which it approved and adopted the Stipulation. Section I of the Stipulation expressly allows only Idaho Power—and no other party—to open a separate docket to raise issues applicable to the capacity threshold for standard wind and solar QF contracts and the term of such contracts.[1] Although PacifiCorp was well aware at the time the Stipulation was signed of all of the allegations that it now makes in this proceeding, PacifiCorp chose not bargain for the same rights as Idaho Power. Section I of the Stipulation would be rendered meaningless to the extent that PacifiCorp, or any party to the Stipulation other than Idaho Power, is permitted to make a separate filing on these matters. PacifiCorp's request for relief in this docket is a direct violation of the express terms of the Stipulation.

Inexplicably, Commission failed to enforce the Stipulation. In Order 15-209 rejecting the Motion to Dismiss, the Commission recited its authority to revisit its own quasi-legislative

[1] Section I of the Stipulation provides:

> Notwithstanding anything stated and agreed to in this Stipulation, as well as the accompanying Stipulation re: Issues List, Idaho Power hereby reserves the right to bring as separate case filings matters related to: (1) revision of the standard rate eligibility cap; (2) the appropriate maximum contract term; (3) implementation of solar integration charges; and (4) revision of Idaho Power's resource sufficiency period. The parties have agreed that these matters not be included in the proceedings for UM 1610, and further agree and understand that removing these Idaho Power issues from UM 1610 should not prejudice any right of Idaho Power to bring these matters before the Commission as Idaho Power specific case filings.

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determinations without acknowledging that PacifiCorp had bargained away its right to invoke such authority in the first place. It is imperative, both as a matter of law and as a matter of public policy, that the Commission enforce the plain language and clear intent of the Stipulation by rejecting PacifiCorp's request for relief in this docket.

III. PacifiCorp Is Not Entitled To Interim Relief Just Because The Commission Ordered Interim Relief for Idaho Power

The basis of PacifiCorp' request for interim relief is not that it faces imminent harm but that it is somehow entitled to the same relief granted to Idaho Power in UM 1725. PacifiCorp opens its Motion by reference to Idaho Power:

> On June 23, 2015, the Commission adopted an interim 3 MW standard contract eligibility threshold for Idaho Power pending the Commission's investigation into Idaho Power's application for permanent adjustments to the eligibility threshold and fixed-price term. Like Idaho Power, PacifiCorp has experience an unprecedented increase in requests for long-term PPAs . . .

Motion, p. 1. PacifiCorp's first argument in favor of interim relief is that it should have identical QF contracting standards as Idaho Power. "Lowering the standard contract eligibility threshold for PacifiCorp to 3 MW on an interim basis is consistent with the Commission's policy favoring uniform QF contracting standards." *Id.* at 2. PacifiCorp's second argument is that "[n]ow that Idaho Power's eligibility threshold has been reduced to 3 MW (even on an interim basis), there can be little doubt that QF development will shift to PacifiCorp's system." *Id.* PacifiCorp's Motion is all about keeping up with Idaho Power.

PacifiCorp's "me-too" filing must be rejected for multiple reasons. First and foremost, Idaho Power—unlike PacifiCorp—is expressly permitted under the terms of the Stipulation to request the relief that it seeks in UM 1725, subject to other parties right to object.[2] The Stipulation extends this special concession only to Idaho Power.

[2] Notwithstanding Idaho Power's right to initiate such action under the Stipulation, Obsidian and Cypress Creek reserve all rights to oppose the relief sought by Idaho Power in UM 1725.

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PacifiCorp's Motion also ignores the fact that this Commission has routinely adopted different QF standards for Idaho Power. In UM 1725, Staff explained that "[t]he Commission has previously imposed different PURPA policies for Idaho Power so that Idaho Power is subject to consistent policies in both Oregon and Idaho given that most of Idaho Power's service territory is in Idaho."[3] Staff is correct. Because most of Idaho Power's service territory is in Idaho and is subject to the jurisdiction of the Idaho Commission, this Commission has a long track record of treating Idaho Power different from other utilities in Oregon.[4] In its Order 15-199 in UM 1725, the Commission notes that the interim relief extended to Idaho Power in Oregon is "consistent with action already taken in Idaho . . .." Specifically, "the Idaho Commission reduced the eligibility cap for standard contract for wind and solar QFs to 100kw, and recently reduced the contract term to five years on an interim basis." The primary rationale for granting interim relief to Idaho Power in UM 1725 does not apply to PacifiCorp.

PacifiCorp also hypothesizes in its Motion that the interim relief granted to Idaho Power in UM 1725 will ignite a mass migration of solar development from Idaho Power's service territory to PacifiCorp's service territory. "Now that Idaho Power's eligibility threshold has been reduced to 3 MW (even on an interim basis), there can be little doubt that QF development will shift to PacifiCorp's system while the request for permanent adjustments to the threshold and fixed price term are considered in this docket." Motion, p. 2. But

[3] *See* Staff Response to Motion for Temporary Stay, filed in UM 1725 on June 2, 2015.
[4] In Order No. 05-584, for example, the Commission held: "In recognition of the fact that Idaho Power exclusively uses the SAR methodology in its Idaho service territory, where it serves far more customers than its Oregon service territory, we find that the administrative burdens to Idaho Power of developing and applying new avoided cost methodologies in Oregon outweigh the potential benefits and justify allowing Idaho Power to continue to use the SAR methodology. Consequently, we direct Idaho Power to continue using the SAR." In Order No 07-360, the Commission held that "Idaho Power, however, may use the modeling methodology approved by the Idaho Public Utilities Commission for deriving avoided costs that serve as the starting point for negotiations with large QFs under a legally enforceable obligation."

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PacifiCorp offers no evidence—not even anecdotal evidence—that would support the conclusion that any developers have actually shifted from Idaho Power to PacifiCorp. Indeed, the notion that a developer working to build a solar QF project in Idaho Power's service territory could *immediately* shift gears seek a PURPA contract from, and interconnect with, a different utility reflects virtually no understanding of the solar development process. The Commission's investigation may produce evidence of such "geographic arbitrage" over the long term, but it will certainly not happen so quickly as to warrant the interim relief sought by PacifiCorp.

The Joint Parties will address the issues of Idaho Power and its own enormous credibility gap in a separate filing in UM 1725. The point is that the action of the Commission with respect to Idaho power is not a reasonable basis to grant PacifiCorp's request for interim relief.

IV. The Facts Show That The Current Volume of PURPA Contract Requests is Neither "Extreme" Nor "Unprecedented"

In its Motion, PacifiCorp alleges that it "has experienced an unprecedented increase in requests for long-term PPAs" for PURPA projects. *See* Motion, p. 1. In support of this allegation, PacifiCorp repeats the conclusory statement from its original Petition in this docket that it has "435MW of active requests." *See id.* at 3. Although PacifiCorp represents that this is a substantial "increase" over the normal volume of PURPA contract requests, PacifiCorp relies on non-public data. PacifiCorp also fails to provide the Commission with any comparative data from prior years. The allegations in PacifiCorp's Petition and its Motion do not match the facts from PacifiCorp's own interconnection queue—which is publicly available and is more reliable than PacifiCorp's secret database.

PacifiCorp's interconnection queue shows that the current volume of PURPA contract requests is consistent with—and in many cases *less* than—the volume of renewable energy project development in PacifiCorp's Oregon service territory over the past several years. The

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interconnection queue lists all interconnection requests made in PacifiCorp's service territory over the past 15 years. Although not all of the projects in the interconnection queue are QF projects, all QF projects must enter the interconnection queue in order to sell power to PacifiCorp. Further, because it is *very* expensive and time consuming for developers to obtain a signed agreement for interconnection services, the projects entering the interconnection queue represent only the most viable of the total universe of proposed energy projects. If there has been a surge in solar QF development on PacifiCorp's system in recent years, it would be reflected in PacifiCorp's interconnection queue. *See generally*, Obsidian/100, Brown/1-5.

PacifiCorp's interconnection data from 2007 to the present indicates—quite conclusively—that there has been no "unprecedented" surge in project development since the Commission's Order 14-058. *See* Obsidian/100, Brown/4. PacifiCorp's annual interconnection data for Oregon renewable energy projects from 2007 through 2013 is as follows:

- In 2007 PacifiCorp received requests for interconnection service for 17 projects representing 325 MW of capacity.
- In 2008 PacifiCorp received requests for interconnection service for 27 renewable projects representing 1,857 MW of capacity.
- In 2009 PacifiCorp received requests for interconnection service for 27 renewable energy projects representing 981 MW of capacity.
- In 2010 PacifiCorp received requests for interconnection service for 27 renewable energy projects representing 951 MW of capacity.
- In 2011 PacifiCorp received requests for interconnection service for 24 renewable energy projects representing 350 MW of capacity.
- In 2012 PacifiCorp received requests for interconnection service for 14 projects representing 597 MW of capacity.

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- In 2013 PacifiCorp received requests for interconnection services for 14 projects representing 667 MW of capacity.

See Obsidian/100, Brown/4.

PacifiCorp's argument is that it has seen an "unprecedented" and "extreme" growth in PURPA projects since the Commission issued Order 14-158 in 2014. *See* Motion, pp. 1, 3. If this were true, then one would expect corresponding "extreme" and "unprecedented" growth in interconnection requests and interconnection agreements in 2014 and 2015. According to PacifiCorp's interconnection queue, however, 543 MW of interconnection services were requested in 2014 and 186 MW of capacity in 2015. These Me totals represent a decrease compared to 2008, 2009, 2010, 2012 and 2013. Further, only 11 of these projects have signed interconnection agreements since January 1, 2014. *See* Obsidian/100, Brown/4. These 11 projects represent just 90 MW of capacity. *See id.* The facts show that there has been no unprecedented and extreme growth in QF development. *See id.* PacifiCorp's allegations of rampant QF development, although perhaps superficially compelling, are simply not true.

PacifiCorp also argues that the nameplate capacity of all of the current and "pending" PURPA projects would be hundreds, if not thousands, of MWs and would completely overwhelm its system. *See* Motion, p. 3. Again, PacifiCorp's allegations do not line up with the facts. As explained below, the experience and evidence is that some of the 11 projects that have executed interconnection agreements since January 1, 2014 will never be built. Even if they all are built, however, none of them will generate at a 100% capacity factor equal to their full nameplate capacity day and night all year long. The 11 new projects with interconnection agreements (all solar) can be reasonably expected to generate about 200,000 MWh of energy per year, none of it at night. *See* Obsidian/100, Brown/4. PacifiCorp's annual retail load in Oregon is in excess of 13 million MWh. *See id.* These new projects would therefore supply only about 1.5% of PacifiCorp's annual energy needs. *See id.* Not 56% of the average load or 90% of the minimum load, as PacifiCorp claims in its Motion, but 1.5 %.

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See Motion, p. 3. The facts do not support the dire picture painted by PacifiCorp in its Motion.

V. The Current Volume of PURPA Contract Requests is Unlikely to Continue

In its request for interim relief, PacifiCorp infers the alleged spike in solar QF contract requests will continue unabated. *See* Motion, p. 3. The facts indicate otherwise. First, the federal tax credit window for solar QF projects has essentially closed already. *See* Obsidian/100, Brown/8-9. In order to be eligible for the 30% federal tax credit, new projects must be completed and achieve commercial operation before December 31, 2016. *See id.* PacifiCorp's own website discussing QF contracts advises that no new project will be able to complete the necessary interconnection work in less than 18 months. *See id.* Thus, it is now impossible for new solar QF projects to be started and completed prior to the statutory expiration of the 30% federal tax credits. In other words, any project seeking a long-term PPA from this point forward will not be completed in time to be eligible for the 30% federal tax credits. This will result in a reduction of new contract requests.

The second reason why the alleged surge in PURPA contracts is unlikely to continue is that PacifiCorp's avoided cost rates were sharply reduced as of July 1, 2015. One of the major changes imposed by the Commission in Order 14-058 is to allow the utilities to make annual updates to their avoided cost rates. PacifiCorp has followed this order to slash its avoided cost rates. The fifteen-year, levelized price of the weighted current peak and off-peak prices for renewable avoided cost (accounting for the fact that solar is a daytime resource) as adjusted for inflation is $.0437 KWh. *See* Obsidian/100, Brown/9-10. The standard avoided cost rate (as compared to renewable avoided cost rate) is even less. *See id.* As PacifiCorp's own IRP indicates, the levelized costs to develop a solar project are *far* greater than these new avoided cost rates. Thus, the measures adopted by the Commission to protect ratepayers from overpaying for PURPA energy are already working to stifle new PURPA projects, and there is

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no need for this Commission to implement more severe penalties against new solar QF projects on an interim basis or otherwise.

VI. The Facts Shows That The Alleged Surge In PURPA Contract Requests Will Result In Very Few Completed Projects

The lynchpin of PacifiCorp's request for interim relief is the *suggestion* that requests for PURPA contracts equate with completed projects and installed capacity. Although PacifiCorp's legal argument paints with a broad brush, PacifiCorp's supporting testimony deliberately and carefully avoids any direct representation that requests for PURPA contracts correlate with completed projects. *See* Obsidian/100, Brown/5. When the Commission reads the PacifiCorp testimony closely, the Commission will not find any testimony stating that a large number of solar projects or wind projects will actually be built in the next 12 or 18 months. *See id.* There is, therefore, no evidence in the record supporting the conclusion that PacifiCorp will experience a glut of new solar QF development. The evidence from PacifiCorp's interconnection queue, on the other hand, shows that shockingly few proposed renewable energy projects—even among those that make it as far as the interconnection stage—are actually completed. *Id.* at 5-8. From a statistical standpoint, the interconnection data shows that there is essentially no correlation between simply requesting a contract and actually completing a project.

Tracking the same annual numbers provided above for interconnection requests, PacifiCorp's records show that overwhelming majority of such projects fail to achieve commercial operation:

- In 2007 PacifiCorp received interconnection requests for 325 MW of capacity. Only 50 MW were ever completed.
- In 2008 PacifiCorp received interconnection requests for 1,857 MW of capacity. Only 5.3 MW were ever completed.
- In 2009 PacifiCorp received interconnection requests for 981 MW of capacity. Only 12 MW were ever completed.

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- In 2010 PacifiCorp received interconnection requests for 951 MW of capacity. Only 6.6 MW have been completed.

- In 2011 PacifiCorp received interconnection requests for 350 MW of capacity. Only 5 MW have been completed.

- In 2012 PacifiCorp received interconnection requests for 597 MW of capacity. None have been completed yet. Projects representing 538 MW of capacity have already been dropped from the interconnection queue.

- In 2013 PacifiCorp received interconnection requests for 14 renewable energy projects totaling 667 MW. Of those 14, 12 have already been deactivated and the remaining two that are "in-progress" total only 14 MW.

See Obsidian/100, Brown/6.

According to PacifiCorp's own data, since 2007 at least 215 renewable energy projects in Oregon have requested interconnection agreements from PacifiCorp. *See* Obsidian/100, Brown/7. These 215 projects represent an aggregate nameplate capacity of 6,912 MW. *See id.* Of these 215 potential projects, only 22 have actually been completed and placed in service. *See id.* Those 22 completed projects resulted in only 80 megawatts of installed capacity. *See id.* With respect to solar projects in particular, 95 projects have requested interconnection services in the last 15 years. *See id.* Of these 95 solar projects, only one project having a nameplate capacity of 2 MW was actually built and it was not even a QF project. *See id.* PacifiCorp's interconnection queue shows that no solar QF projects have been built in PacifiCorp's service territory in Oregon in the last 15 years. *None.*

VII. There Are No Facts That Indicate That Any Future QF Solar Projects Would Harm PacifiCorp's Ratepayers

In order to conclude that interim relief is now required to protect PacifiCorp's ratepayers, the Commission would have to accept the proposition that avoided cost rates that went into affect just two weeks ago are already outdated. The interim relief sought by

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PacifiCorp would not apply to projects that already have a long-term PPA or even a LEO for a PPA. The interim relief would only apply to projects that would be subject to PacifiCorp's most recent avoided cost update, which became effective on July 1, 2015. Thus, PacifiCorp's argument is essentially that its new rates—the rates that were literally just approved by the Commission—would overcompensate QF projects at the expense of its ratepayers. In other words, PacifiCorp makes the Kafkaesque argument that its current avoided cost rates are so much higher than its actual avoided costs that the Commission must now take emergency action to protect its ratepayers.

A basic flaw with PacifiCorp's Motion is that it simply presumes, without any factual basis, that the very existence of any new solar QF projects on its system would be harmful to its ratepayers. This is a false assumption. The fact is that any new solar QF projects receiving the most current avoided cost rates (as would any project that would be subject to the interim relief at issue here) would confer significant *benefits* to PacifiCorp's ratepayers. PacifiCorp's ratepayers would benefit from having long-term, fixed-prices for acquiring carbon-free, renewable energy at an average cost that is less than the cost of power from PacifiCorp's aging coal fleet.

VIII. Conclusion

PacifiCorp's Motion is reminiscent of the old adage that says: "Don't let the facts get in the way of a good story." In this case, PacifiCorp has spun a good story. It is a story of a federal law run amok that has resulted in profligate power development and wanton profiteering by sophistical international corporations at the expense of PacifiCorp's otherwise helpless ratepayers.

As is often the case with good stories, however, the facts are a little different. The facts show that PacifiCorp itself is part of a sophisticated international corporation that vigorously guards its shareholder profits. The facts show that the volume of renewable power

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development on PacifiCorp's system following Order 14-058 is no greater than it has been since at least 2007. The facts show that precious few proposed renewable energy projects—even among those that reach the interconnection stage—will ever be completed. The facts show that the development of any future solar QF projects will be severely limited by PacifiCorp's recently revised avoided cost rates and the pending expiration of the 30% federal tax credits. Finally, the facts show that PacifiCorp's ratepayers are being harmed not by the proliferation of renewable QF projects but by a business and regulatory environment that makes such projects virtually impossible to build.

DATED this 14th day of July, 2015.

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