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July 12, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

**RE: UM 1610—PacifiCorp and Portland General Electric Company Joint Application
for Reconsideration and Joint Motion to Stay Compliance**

PacifiCorp d/b/a Pacific Power encloses for filing the joint application for reconsideration and joint motion to stay compliance of Pacific Power and Portland General Electric Company in the above-referenced docket.

Please direct any informal inquiries to Denise Saunders (PGE) at (503) 464-7181 or Natasha Siores (Pacific Power) at (503) 813-6583.

Sincerely,

R. Bryce Dalley
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1610

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into Qualifying Facility Contract
and Pricing.

**PACIFICORP’S AND PORTLAND
GENERAL ELECTRIC COMPANY’S
JOINT APPLICATION FOR
RECONSIDERATION AND JOINT
MOTION TO STAY COMPLIANCE**

PacifiCorp d/b/a Pacific Power (PacifiCorp) and Portland General Electric Company (PGE) (collectively the Companies) respectfully asks the Public Utility Commission of Oregon (Commission) to reconsider a narrow portion of Order No. 16-174 (May 13, 2016) (the Order). Specifically, the decision to establish a mandatory market-price floor for non-standard avoided costs is based on an essential error of law because it squarely conflicts with PURPA’s mandatory customer indifference standard. Furthermore, good cause exists for reconsideration because the market price floor will render moot the very benefits that compelled the Commission to authorize PacifiCorp’s usage of the partial displacement differential revenue requirement (PDDRR) method. In light of the discussion below, reconsideration of the market price floor is warranted.

The Companies also ask the Commission to stay implementation of the market price floor until this Joint Application is resolved.

The Companies support the Motion for Rehearing/Clarification filed by Idaho Power in this docket.

I. Background

A. PURPA's Customer Indifference Standard

Under PURPA, utility customers must be economically indifferent to purchases of QF power by paying no more for power than the amount they would have paid but-for the purchase from the QF.¹ State utility commissions implement PURPA's mandatory customer indifference standard by setting the prices paid to QFs at no more than a utility's avoided costs.

The Commission has repeatedly recognized the importance of the customer indifference standard. As early as 1981, the Commission has explained that the primary goal of its PURP A policies was:

[T]o provide maximum economic incentives for development of qualifying facilities while insuring that the costs of such development do not adversely impact utility ratepayers who ultimately pay these costs.²

Since then, the Commission has continually acknowledged the importance of ratepayer indifference when setting PURPA policies.³ Indeed, the Commission has identified ratepayer indifference as its "primary aim."⁴

¹ *Indep. Energy Producers Ass'n, Inc. v. Cal. Pub. Utils. Comm'n*, 36 F.3d 848, 858 (9th Cir. 1994) ("If purchase rates are set at the utility's avoided cost, consumers are not forced to subsidize QFs because they are paying the same amount they would have paid if the utility had generated energy itself or purchased energy elsewhere.")

² Docket No. R-58, Order No. 81-319 at 3 (May 6, 1981).

³ See, e.g., Docket No. UM 1129, Order No. 05-584 at 11 (May 13, 2005) ("We seek to provide maximum incentives for the development of QFs of all sizes, while ensuring that ratepayers remain indifferent to QF power by having utilities pay no more than their avoided costs."); Docket UM 1129, Order No. 06-538 at 37 ("[O]ur overriding goals in this docket are to encourage QF development, while ensuring that ratepayers are indifferent to QF power."); Docket No. UM 1129, Order No. 07-360 at 1 (Aug. 20, 2007) ("This Commission's goal is to encourage the economically efficient development of QFs, while protecting ratepayers by ensuring that utilities incur costs no greater than they would have incurred in lieu of purchasing QF power (avoided costs)"); Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014) ("We first return to the goal of this docket: to ensure that our PURP A policies continue to promote QF development while ensuring that utilities pay no more than avoided costs.")

⁴ Order No. 05-584 at 45 ("In balancing the goals of facilitating QF contracts while sufficiently protecting ratepayers, we recognize that the primary aim is to ensure that ratepayers remain indifferent to the source of power that serves them.")

FERC has likewise affirmed the need to ensure ratepayer indifference to utility purchases of QF power, noting that, in enacting PURPA, “[t]he intention [of Congress] was to make ratepayers indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives.”⁵ As PURPA’s legislative history makes clear, PURPA was intended to encourage cogeneration and small power production, but it was not intended to subsidize QFs by paying them prices that exceed avoided costs.⁶

B. Oregon’s Avoided Cost Price Structure

Recognizing the relative negotiating power of smaller QFs, PURPA permits two tiers of prices – standard formulaic prices for small QFs and non-standard prices that reflect the specific attributes of larger QFs. In Oregon, the Commission has adopted the proxy method for calculating standard avoided cost prices for small QFs. Generally speaking, standard prices vary depending on whether the utility is resource sufficient or deficient – during periods of resource sufficiency, prices are set at market; during periods of deficiency, avoided costs are approximated using the proxy method.

C. Issue 7 – Calculating Non-Standard Avoided Cost Prices

Among other things, Phase II of this docket addressed the issue of the proper methodology for determining non-standard avoided cost prices for larger QFs. The Commission made a number of key rulings on the issue. First, the Commission ruled that the utilities need not use the same methodology for calculating non-standard avoided cost prices.⁷ The Commission then ruled that PGE could continue to use the methodology

⁵ *S. Cal. Edison Co., et al.*, 71 FERC ¶ 61,269, 62,080 (1995) overruled on other grounds, *Cal Pub. Util. Comm’n*, 133 FERC ¶ 61,059 (2010).

⁶ See Conference Report on PURPA, H.R. Rep. No. 1750, 95th Cong., 2nd Sess. 97-98 (“The provisions of this section are not intended to require the rate payers of a utility to subsidize co-generators or small power producers.”).

⁷ Order at 22.

established in Order No. 07-360, under which the standard prices are used as a starting point then adjusted to reflect the seven factors in 18 C.F.R. § 292.30(e).⁸ The Commission also ruled that Idaho Power could continue to use a methodology approved by the Idaho Public Utilities Commission.⁹

For PacifiCorp, the Commission ruled that it could use a GRID model-based approach for calculating non-standard avoided cost prices.¹⁰ The Commission found that the PDDRR methodology “more accurately values energy and capacity on PacifiCorp’s system by taking into account the unique characteristics (including location, delivery pattern, and capacity contribution) of each QF.”¹¹ The Commission recognized that the PDDRR methodology would “improve[] avoided cost pricing” and facilitate “ratepayer cost neutrality.”¹²

Had the discussion of non-standard pricing ended there, the Companies would not have found need for reconsideration. The Commission, however, adopted a misplaced recommendation from the Oregon Department of Energy (ODOE) that conflicts with PURPA’s customer indifference standard, modifies long-standing practices for calculating non-standard avoided cost prices, and renders its approval of PacifiCorp’s PDDRR methodology potentially moot. Specifically, the Commission adopted a bright-line market price floor for non-standard avoided cost prices for all three utilities: “We ... set the floor for

⁸ Order at 22.

⁹ Order at 22-23.

¹⁰ Order at 23.

¹¹ Order at 23.

¹² Order at 23.

non-standard avoided cost prices at the wholesale power price forecast that is use to set sufficiency period avoided cost prices in standard QF contracts.”¹³

II. Aspects of the Order Are Based on an Essential Error of Law and Good Cause Exists for Reconsideration of the Market Price Floor

A. Erroneous Portion of the Order

The Companies ask the Commission to reconsider the market price floor adopted in the last paragraph Section F(2) on page 23 of the Order. As detailed below, the market price floor is predicated on an essential error of law, and good cause exists for reconsideration because the market price floor would (i) render the benefits of the PDDRR methodology moot; (ii) result in inconsistencies with PGE’s standard avoided cost pricing; and (iii) result in rates that are higher than avoided costs to the detriment of customers.

A. The Market Price Floor Conflicts with PURPA’s Customer Indifference Standard

First and foremost, the Order is based on an essential error of law that warrants reconsideration. As described above, PURPA requires utility customers to be indifferent to QF purchases.¹⁴ The market price floor squarely conflicts with the customer indifference standard because it would compel PacifiCorp to pay QFs market prices when the avoided costs determined by the PDDRR methodology are lower than market price forecasts. Indeed, undisputed record evidence demonstrates that there are “many times when the incremental cost of energy and capacity that would be incurred by a utility will be less than market, including times during the deficiency period.”¹⁵ As discussed below, there are also times

¹³ Order at 23.

¹⁴ Order No. 05-584 at 45 (“In balancing the goals of facilitating QF contracts while sufficiently protecting ratepayers, we recognize that the primary aim is to ensure that ratepayers remain indifferent to the source of power that serves them.”)

¹⁵ Pac/1400, Dickman/7.

when, the market price floor could cause PGE to pay market price costs when the avoided costs are lower.

Furthermore, the Commission adopted an improper balancing test under which developer certainty trumps utility customer economic indifference – “We are persuaded that the benefit of QF developers understanding the price floor outweighs the minimal risk described by PacifiCorp that avoided cost prices produced by the PDDRR method would be lower than market.”¹⁶ This ruling runs afoul of PURPA by giving primacy to “QF developer understanding” at the expense of ensuring utility customers pay no more than avoided costs.¹⁷

This improper balancing test is made more problematic by the fact that the record in this proceeding contains no evidence whatsoever detailing the benefits of “QF developer understanding.” Even if the Commission could favor “QF developers understanding” over customer indifference (which it cannot), any balancing should be based on specific, concrete record evidence rather than unsubstantiated policy conclusions. Accordingly, the market price floor is predicated on an essential error of law that warrants reconsideration.

B. The Market Floor Price Undermines the Benefits of the PDDRR Methodology

The Commission recognized that PacifiCorp’s PDDRR methodology “more accurately values energy and capacity,” and as a result, generates more accurate avoided cost prices.¹⁸ The Commission, however, inadvertently undermined its own ruling by adopting a market-price floor. ODOE’s testimony is based on the simplistic and incorrect assumption

¹⁶ Order at 23.

¹⁷ And even if the Commission was permitted to give primacy to “QF developer understanding” (which it is not), the record in this proceeding contains no specific evidence about how specifically QF developers would benefit.

¹⁸ Order at 23.

that QF energy always displaces market purchases. The benefit of using a production dispatch model like GRID is that system resource constraints are accounted for (e.g., transmission capacity) and the actual resource displaced by QF generation may not be a market purchase.¹⁹

The market price floor will, in certain circumstances, render the benefits of using GRID moot by compelling PacifiCorp to pay QFs market prices when the utility cannot actually avoid a market transaction. If at any time, PacifiCorp is required to purchase the generation output from a QF at some pre-determined market price, and that price is greater than the cost of generation the utility would use to serve that load (as determined by GRID), the customer is not kept whole, but harmed. Because the market price floor will undermine the benefits of PacifiCorp's production modeling, good cause exists for reconsideration. By eliminating the market price floor, the Commission will allow PacifiCorp's customers to realize the full benefits of accurate avoided cost pricing using the PDDRR methodology while ensuring QF developers receive lawful payment streams.

C. The Market Floor Price is Inconsistent with PGE's Standard Contract Pricing and May Result in Rates that are Harmful to Customers

The market price floor is inconsistent with PGE's current fixed pricing under a standard contract. PGE's Schedule 201, applicable to standard contracts for QFs sized at 10 MW or lower, provides several options under which the fixed prices during the deficiency period are currently lower than those during the sufficiency period. The prices in Schedule 201 were updated and approved by the Commission within a month of the issuance of Order

¹⁹ See PAC/1400, Dickman/6.

No. 16-174.²⁰ The adoption of the market price floor for non-standard avoided cost prices means that during a deficiency period, PGE would have to pay a large QF higher prices than it would pay a similarly situated QF under a standard contract. It also results in rates that are higher than avoided costs during deficiency periods.²¹ This is because deficiency period avoided costs reflect the fully allocated costs of either a natural gas or wind plant. A market price floor ignores the fact that the costs of a natural gas or wind plant could be lower than market prices. In such circumstances, PGE will be paying a QF developer a rate that is harmful to customers because it is above the cost at which the utility could otherwise generate or purchase energy. This conflicts with the customer indifference standard and is contrary to the requirements of PURPA.

III. Motion for Limited Compliance Stay

Concurrently with this motion, the Companies separately made compliance filings as required under Order. The Companies' compliance filings implement, among other things, the market price floor adopted in the Order.

Under OAR 860-001-0700(1), the Companies ask the Commission to narrowly stay implementation of the non-standard avoided cost market price floor until the Commission has resolved this Joint Application for Reconsideration. Pricing in PURPA contracts is fixed for 15 years, so good cause exists to stay compliance of the market price floor while the Commission addresses the Companies' arguments presented herein.

²⁰ Docket No. UM 1728, Order No. 16-220 (June 8, 2016).

²¹ Order No. 16-174 was not clear as to whether the market price floor would apply during periods of both sufficiency and deficiency.

IV. Conclusion

For the reasons discussed herein, the Companies respectfully ask the Commission to reconsider adoption of the market price floor for non-standard avoided cost pricing. The Companies also ask the Commission to stay implementation of the market price floor while considering this issue.

Respectfully submitted this 12th day of July, 2016.

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