

PacifiCorp made its compliance filing on July 12, 2016. Also on July 12, 2016, PacifiCorp and Portland General Electric Company (PGE) filed a Joint Application for Reconsideration and a Joint Motion to Stay Compliance. The utilities requested that the Commission “reconsider the decision to establish a mandatory market-price floor for nonstandard avoided costs.”³ In addition, the companies asked that the Commission stay implementation of the market price floor while considering the issue.

In Order No. 16-337, issued September 8, 2016, the Commission denied the Application for Reconsideration and the Motion to Stay Compliance stating, “We reaffirm that we find the market price to be the appropriate floor for the minimum avoided cost rate paid during a sufficiency period, even if the incremental cost of generation is lower than the market price because absent transmission constraints, a utility may sell the QF generation on the market.”⁴

PacifiCorp’s compliance filing for non-standard avoided cost prices was presented to the Commission at the October 25, 2016, Public Meeting. After hearing comments from Staff, PacifiCorp, and the Renewable Energy Coalition (REC), the Commission decided to “address the issues raised in the Staff Report with regard to PacifiCorp’s non-standard avoided costs rates at [the] November 8, 2016, Public Meeting.” The Commission requested opening and reply comments to better inform its decision.

Discussion and Analysis

Staff continues to recommend that the Commission reject PacifiCorp’s non-standard avoided cost filing filed to comply with Order No. 16-174 because the filing does not provide an option that allows renewable QFs entering into a non-standard contract to select a renewable avoided cost price stream as required under Order No. 11-505. If that option is not made available by PacifiCorp, renewable QFs would not have the opportunity to receive non-standard avoided cost prices that take into account RPS-compliance costs that PacifiCorp could avoid with purchases from that QF.

Comments from Other Parties

PacifiCorp, Staff, and the following parties filed comments on October 31, 2016: Renewable NW (RNW); Oregon Department of Energy (ODOE); Cypress Creek Renewables (Cypress Creek); Obsidian Renewables LLC (Obsidian); and Community Renewable Energy Association, Renewable Energy Coalition and Northwest Intermountain Power Producers Coalition (Joint QF Parties). All parties except PacifiCorp support the Staff position that the non-standard avoided cost portion of

³ PacifiCorp’s and Portland General Electric Company’s Joint Application for Reconsideration and Joint Motion to Stay Compliance at 1.

⁴ Order No. 16-337 at 6.

PacifiCorp's July 12, 2016, filing should not be approved. These parties' comments are summarized below.

RNW cites the Commission's "long-standing policy allow[ing] renewable QFs to contribute to utility efforts to comply with Oregon's renewable portfolio standard (RPS) and be compensated for that contribution."⁵ RNW states, "It is also worth noting that in a separate docket – UM 1734 – the Commission reduced the eligibility threshold for solar QFs from 10 MW to 3 MW after parties to this docket filed testimony, but before the Commission issued Order 16-174[.]"⁶

RNW notes that "PacifiCorp did not request that the Commission change its longstanding policy of requiring that renewable QFs have the option to choose a renewable avoided cost stream when they can contribute to a utility's RPS obligations. Hence, neither Staff nor parties addressed the issue in Phase II testimony or briefs."⁷ RNW quotes the opening paragraph of Order No. 16-174 in which the Commission states, "we consider the proposals in the context of federal and state law and our prior orders addressing these issues, and decline to make changes without compelling evidence of a need for revision," and adds, "Not only is there no 'compelling evidence' to support eliminating the renewable avoided cost stream for QFs above the eligibility threshold, there is no evidence that discusses this major policy change."⁸

RNW asserts that "...the Commission cannot change the policy that it adopted in Order No. 11-505 by accident or implication," and that while the Commission has the authority to make policy changes, "it must explain its departure from prior decisions in doing so."⁹ RNW cites a concern that if this major change were to occur in this manner, "it could potentially embolden parties in the future to try to effectuate significant policy changes without describing the proposed changes and without proper vetting."

ODOE responds to PacifiCorp's October 24, 2016, comments filed in response to the Staff Report for the October 25, 2016, public meeting. Specifically ODOE focuses on the PacifiCorp's statement that, "Staff would have the Commission reject PacifiCorp's compliance filing based on an entirely new argument – that Schedule 38 pricing should reflect a renewable price stream. This issue was not litigated in the proceeding."¹⁰ ODOE "agrees that this issue was not litigated in the proceeding." ODOE further states, "The Department assumed that the PDDRR method would be able to incorporate the

⁵ Comments of Renewable Northwest, Docket UM 1610, October 25, 2016 at 1.

⁶ Id at 2.

⁷ Id at 3.

⁸ Id at 4.

⁹ Id at 4.

¹⁰ PacifiCorp's Response Comments, Docket UM 1610, October 24, 2016 at 1.

difference in avoided costs between a non-renewable and a renewable QF. The excerpt from Order No. 16-174 is consistent with the Department's assumption."¹¹

ODOE "recommends that the Commission clarify that its Order 16-174 was not intended to end non-standard renewable offers by the Company. Furthermore, ODOE recommends that the Commission also note that if the PDDRR method does not allow the Company to calculate a non-standard renewable offer, then the Company should continue to follow the methodologies established in Order No. 07-360."¹²

Cypress Creek states its concern that, "this foundational question should be resolved in Docket No. UM 1799 first, on an expedited basis," because, "if the matters in this docket are instead resolved first, the resolution of the issue central to its Complaint will be prejudiced and its legal position will be undermined."¹³ Cypress Creek also says it, "has no objection to the Commission addressing the issues raised in the Staff Report in parallel with its consideration of the Complaint."¹⁴ With respect to the substance of the PacifiCorp compliance filing, Cypress Creek "strongly agrees with the Staff's finding...of 'no indication in Order No. 16-174 that the Commission intended to rescind its decision on the availability of renewable avoided cost prices for non-standard QFs."¹⁵

Obsidian states that, "PacifiCorp's position on this matter is troubling. Assuming that PacifiCorp intended all along for the PDDRR methodology to repeal its obligation to provide a renewable price-stream for non-standard QFs, PacifiCorp failed to fully disclose this intent or the import of its proposal."¹⁶ Obsidian continues, "Taken to its logical conclusion, PacifiCorp's argument is that it may take a position in a compliance filing that is completely unhinged from the underlying Commission Order so long as no party had previously anticipated and objected on the record to such a position."¹⁷ With respect to PacifiCorp's comments regarding Staff's testimony recommending adoption

¹¹ Comments of the Oregon Department of Energy at 2, quoting Order No. 16-174 at 23:

"We approve PacifiCorp's request to use its PDDRR method going forward. We agree this GRID model-based method **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. Although Coalition and CREA suggest it is unnecessary to fix what is not broken, we are responsible under PURPA to improve our implementation to benefit both QF development and ratepayer cost neutrality. We are persuaded that the PDDRR method improves non-standard QF avoided cost pricing for QFs selling to PacifiCorp and we adopt it." (emphasis added).

¹² Id at 2-3.

¹³ Cypress Creek Renewables Comments on Issues Raised in the October 19, 2016 Staff report in Docket UM 1610 Phase II, October 31, 2016, at 2.

¹⁴ Id., at 3.

¹⁵ Id., at 2.

¹⁶ Comments of Obsidian Renewables, October 31, 2016, at 2.

¹⁷ Id., at 3.

of the PDDRR methodology, Obsidian states, "PacifiCorp apparently believes that, having expressed support of the PDDRR methodology, Staff somehow waived its right to comment on PacifiCorp's implementation of that methodology. In fact, Staff never testified that the Commission's acceptance of the PDDRR methodology would automatically repeal the renewable price stream for non-standard QFs." Obsidian states that it, "actively participated in the UM 1610 workshops and followed all filings and, like Staff, never understood that the use of the PDDRR method would somehow excuse PacifiCorp from offering a renewable price stream on Schedule 38 projects."¹⁸

The Joint QF Parties state that the Commission, "should affirm that renewable pricing is available for larger QFs that agree to convey renewable portfolio standard (RPS) attributes," adding that, "PacifiCorp essentially asks the Commission to resolve an enormously important policy question through a strained (and incorrect) reading of procedural rules regarding compliance filings. Instead of clearly asking the Commission to rule on a proposal to take away the renewable avoided cost rate for large QFs, PacifiCorp attempted to sneak a large policy change past the parties and the Commission through vague, ambiguous, and contradictory testimony and pleadings."¹⁹ The Joint Parties ask the Commission to, "direct PacifiCorp to revise its compliance filing to acknowledge the right to renewable pricing for QFs that are too large to receive standard rates."²⁰

In comments filed on October 31, 2016, PacifiCorp asserts that the Commission should approve its compliance filing because it complies with the clear terms of Order No. 16-174, and no party identified any inconsistencies between PacifiCorp's Schedule 38 compliance filing and the terms of Order No. 16-174. PacifiCorp argues that its filing is not inconsistent with previous orders because the Commission "implicitly" rescinded the requirement for a renewable avoided cost price stream for non-standard contracts when it approved the PDDRR methodology for calculating non-standard avoided cost prices. PacifiCorp asserts that its testimony was clear that the PDDRR methodology would develop a single price stream and that Staff and intervenors had ample opportunity to test PacifiCorp's proposal through data requests and testimony and did not oppose the methodology based on the lack of a renewable price stream. PacifiCorp asserts that the Commission should not give Staff and intervenors a "second bite at the apple" by allowing them to challenge the PacifiCorp's PDDRR method in this compliance proceeding.

¹⁸ Id., at 5.

¹⁹ Comments of the Community Renewable Energy Association, Renewable Energy Coalition, and Northwest and Intermountain Power Producers Coalition, UM 1610, October 31, 2016, at 1-2.

²⁰ Id., at 2.

Staff notes that this report will be finalized prior to the filing of reply comments on November 3, 2016. Staff will review the reply comments and be prepared to respond at the November 8, 2016, public meeting, whether those comments cause Staff to revise its recommendations contained in this memo.

Conclusion

Staff maintains its position that nothing in Order No. 16-174 indicates that the Commission intended to rescind the requirement imposed under Order No. 11-505 that PacifiCorp offer renewable QFs a renewable and non-renewable avoided cost price stream and allow the QF to choose one or the other. Staff recommends that the Commission conclude that PacifiCorp's July 12, 2016, compliance filing under which renewable QFs would not have the option of selecting a non-standard avoided cost price stream that takes into account RPS-compliance-related costs that PacifiCorp may avoid with purchases from a renewable QF, and therefore is not compliant with Order Nos. 11-505 and 16-174. Staff also recommends that the Commission open an investigation to determine how a renewable avoided cost price stream is to be calculated using PacifiCorp's PDDRR methodology for non-standard renewable QFs that takes into account the avoided costs of compliance with RPS. Further, Staff recommends that, in the event that parties cannot agree on an acceptable methodology, the Commission clarify that a nonstandard renewable avoided cost stream must be offered by PacifiCorp under Schedule 38 as currently approved.

PROPOSED COMMISSION MOTION

Reject PacifiCorp's Non-Standard Avoided Cost Rate (formerly Schedule 38) filed on July 12, 2016, to comply with Order No. 16-174, and open an investigation into the implementation of PacifiCorp's PDDRR methodology for non-standard renewable QFs that takes into account the avoided costs of RPS compliance.