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May 20, 2013

VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY

Public Utility Commission of Oregon
550 Capitol Street NE, Ste 215
Salem, OR 97301-2551

Attn: Filing Center

RE: UM 1610 – Investigation into Qualifying Facility Contracting and Pricing
PacifiCorp's Pre-hearing Memorandum

PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) encloses its Pre-hearing Memorandum for filing in the above-referenced proceeding.

Please contact Joelle Steward, Director of Pricing, Cost of Service and Regulatory Operations, at (503) 813-5542 for questions on this matter.

Sincerely,

William R Griffith

William R. Griffith
Vice President, Regulation

Enclosure

cc: Service List – UM 1610

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's Pre-Hearing Memorandum in the Investigation into Qualifying Facility Contracting and Pricing on the parties listed below via electronic mail and/or US mail in compliance with OAR 860-001-0180.

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Dated this 20th day of May 2013.

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1610
Phase I

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation Into Qualifying Facility Contracting and Pricing	PACIFICORP'S PRE-HEARING MEMORANDUM

I. INTRODUCTION

The Public Utility Commission of Oregon (Commission) opened this docket to investigate issues related to electric utilities' purchases from Qualifying Facilities (QFs) under the Public Utility Regulatory Policies Act (PURPA), following a series of recent issues related to the ongoing implementation of PURPA.[1] Following a number of workshops, the parties agreed to an issues list and to address the issues in two phases.[2] This pre-hearing memorandum sets forth a summary of PacifiCorp d/b/a Pacific Power's legal position on each applicable issue addressed in Phase I and a summary of the factual support for each position.

II. DISCUSSION

The Commission's goal in implementing PURPA 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.[3] This investigation gives

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[1] *In re Idaho Power PacifiCorp's Application to Revise the Methodology Used to Determine Standard Avoided Cost Prices,* and *In re Request to Revise Standard Contract Avoided Cost Prices paid to Qualifying Facilities under Schedule 85,* Docket Nos. UM 1590 and UM 1593, Order No. 12-146 (April 24, 2012).

[2] *See Chief Administrative Law Judge Michael Grant Ruling* (Dec. 21, 2012). This docket was opened to address, in a generic fashion, legal and policy issues related to PURPA implementation and QF contracting. *See Administrative Law Judges Traci A.G. Kirkpatrick and Shani Pines' Ruling* (April 30, 2013). Accordingly, PacifiCorp understands that specific, on-going factual disputes between parties will not be resolved in this docket.

[3] *In the Matter of Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities,* Docket UM 1129, Order No. 07-360 at 1 (Aug. 20, 2007); *see also In the Matter of Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities* , Docket UM 1129, Order No. 05-584 at 11 (May 13, 2005); *See also*

the Commission the opportunity to refine the balance between prices paid to QFs and costs incurred by retail customers. This balance is a one-for-one tradeoff, as every additional dollar paid to QF developers is ultimately borne by retail customers. A number of parties to this docket propose adjustments to QF prices, in particular adjustments to standard QF prices.[4] However, as they apply to standard QF prices, these adjustments are largely contrary to the Commission's stated policies on PURPA implementation.

The aim of calculating avoided costs is to "accurately estimate the costs a utility would incur to obtain an amount of power that it purchases from a QF, either by the utility's self-generation or by purchase from a third-party."[5] In addition, standard rates should be simple, transparent, and easy to administer. A lack of precision in standard rates is a deliberate balancing act, but the use of standard rates is a reasonable approach if eligibility for standard rates is kept within limits that minimize the impact of imprecise prices on utility customers. PacifiCorp's proposals for the timing of updating the demarcation point between sufficiency and deficiency periods, limiting the standard rate eligibility cap to 3 megawatts (MW) or less, and using a model-based method for larger QFs helps to accurately reflect the realities of costs PacifiCorp faces to procure energy and capacity from QFs greater than 3 MW while maintaining transparency and simplicity for QFs up to 3 MW.

Issue 1: Avoided Cost Price Calculation

1A. What is the most appropriate methodology for calculating avoided cost prices?

PacifiCorp proposes using two distinct methodologies for calculating avoided costs: a standard method based on a proxy resource to calculate prices for QFs up to 3 MW (Proxy Method), and a model-based approach referred to as the partial displacement differential revenue

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16 U.S.C. § 824a-3(b), (d); *American Paper Inst., Inc.* v. *American Elec. Power Serv. Corp.,* 461 U.S. 402, 413 (1983); *see also Connecticut Light and Power,* 70 F.E.R.C. 61,012, 61,029 (1995).

[4] *See* PAC/300, Dickman/2.

[5] Order No. 05-584 at 20.

requirement method (PDDRR Method) for QFs larger than 3 MW that captures resource-specific characteristics and impacts on the utility system to calculate a negotiated avoided cost price.[6]

PacifiCorp supports the continued use of the Proxy Method for standard avoided costs. The Proxy Method, which during the deficiency period is based on a fully dispatchable proxy plant that is located in an optimum location to serve load,[7] reasonably balances the Commission's goals of encouraging QF development while maintaining utility customer indifference. Consistent with the Commission's findings in docket UM 1129, QF-specific or resource-specific adjustments to standard avoided costs, which undermine the purposes and advantages of standard rates, should generally be avoided.[8] The Commission should therefore reject proposals to adjust standard avoided costs to account for resource capacity contribution,[9] transmission and system upgrades,[10] and natural gas pipeline capacity or storage capacity.[11] If such adjustments are warranted, they should only be applied to non-standard avoided costs.[12]

PacifiCorp does propose one change to the standard avoided cost calculation during the sufficiency period— use of market prices from a single market hub, the Mid-Columbia hub, rather than blended market prices. PacifiCorp has been required to use multiple markets across its system and to apply weightings to the markets based on an analysis performed in its GRID production cost model.[13] PacifiCorp proposes to eliminate market blending because it adds unnecessary complexities and administrative burdens into PacifiCorp's standard avoided cost calculation without having a material impact on prices.[14] The Mid-Columbia market is an active market in PacifiCorp's western balancing authority area, and fairly represents the short-term energy value of small QF resources in Oregon.

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[6] *See* PAC/100, Dickman/4, 7.
[7] *Id.* at 5.
[8] Order No. 05-584 at 16 ("With standard contracts, project characteristics that cause the utility's cost savings to differ from its actual avoided costs are ignored."); *see also* PAC/300, Dickman/7-8.
[9] PAC/300, Dickman/13-14
[10] *Id.* at 15-16.
[11] *Id.* at 17.
[12] *Id.* at 14.
[13] *See* PAC/100, Dickman/6 (citing Order No. 05-584).
[14] *Id.* at 6-7.

For non-standard avoided cost prices, PacifiCorp strongly urges the Commission to adopt the PDDRR Method, which is a modeling approach that is more accurate than the Proxy Method.[15] The PDDRR Method uses two GRID runs—one with the QF and one without—to account for the additional energy and capacity provided by the QF and to allow for a dynamic re-dispatch of PacifiCorp's system.[16] PacifiCorp uses the PDDRR Method in Utah, Wyoming, and Idaho to calculate non-standard avoided cost prices.[17] The PDDRR Method is a more accurate approach for determining the value of the energy and capacity on PacifiCorp's system because it directly measures the impact each QF has on PacifiCorp's power costs.[18]

The PDDRR Method is superior for a number of reasons. First, it takes into account the Commission's authorized adjustment factors, as well as the remaining factors under 18 C.F.R. § 282.304(e)(2), and other relevant resource-specific factors (for example, location and generation profile), and accurately accounts for the avoided capacity costs, avoided energy costs, and, where appropriate, variable energy integration costs.[19] Second, it allows for updating the modeling inputs as often as practical to ensure that avoided costs are based on the best information available.[20] Third, it is consistent with prior Commission decisions rejecting a proxy approach in favor of using differential GRID runs.[21]

1B. Should QFs have the option to elect avoided cost prices that are levelized or partially levelized.

If the Commission does allow QFs to elect levelized pricing, it should allow utilities to set commensurate security requirements to account for the increased risk to customers.[22]

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[15] *Id.*
[16] PAC/300, Dickman/9.
[17] PAC/100, Dickman/8.
[18] *Id.*
[19] *Id.* at 10-15.
[20] *See* discussion of Issue 3, Schedule for Avoided Cost Price Updates, *infra.*
[21] PAC/300, Dickman/11 (citing *In the Matter of Investigation into Direct Access Issues for Industrial and Commercial Customers Under SB 1149*, Docket UM 1081, Order No. 04-516 at 10 (Sep. 14, 2004).
[22] PAC/200, Griswold/5-6.

1C. Should QFs seeking renewal of a standard contract during a utility's sufficiency period be given an option to receive an avoided cost price for energy delivered during the sufficiency period that is different from the market price?

PacifiCorp recommends that the Commission not adopt preferential pricing options for current QFs seeking a contract renewal. In docket UM 1129, the Commission set the QF contract length at a 20-year term.[23] Extending sufficiency period pricing for contract renewal effectively extends the maximum contract length.[24] Furthermore, PacifiCorp has no ability to force a QF to continue operation beyond the contract term. Consequently, from a retail customer perspective, there is no difference between a QF seeking contract renewal and a new QF.[25]

1D. Should the Commission eliminate unused pricing options?

PacifiCorp proposes to eliminate the Gas Market Indexed and Banded Gas Market Indexed avoided cost pricing options from its standard avoided cost options.[26] No party objects to this proposal.[27]

Issue 2: Renewable Avoided Cost Price Calculation

2A. Should there be different avoided cost prices for different renewable generation sources?

Consistent with the Commission's order in docket UM 1396, both standard and non-standard avoided cost prices should be differentiated for intermittent and non-intermittent renewable resources.[28]

2B. How should environmental attributes be defined for purposes of PURPA transactions?

Environmental attributes should be defined as the environmental, social, and other positive, non-energy characteristics of electricity generation from a renewable resource, consistent with the Oregon Department of Energy's (ODOE) rule OAR 330-160-0015(3).[29]

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[23] Order No. 05-584 at 20.
[24] PAC/100, Dickman/16; *see also* PAC/300, Dickman/18.
[25] PAC/300, Dickman/18-19.
[26] PAC/400, Griswold/6.
[27] *Id.* at 6-7.
[28] *See* PAC/100, Dickman/17-19; *see In the Matter of Investigation into Resource Sufficiency Pursuant to Order No. 06-538*, Docket UM 1396, Order No. 11-505 at 5 (Dec. 13, 2011).
[29] PAC/200, Griswold/7-9.

2C. Should the Commission amend OAR 860-022-0075, which specifies that the non-energy attributes of energy generated by the QF remain with the QF unless different treatment is specified by contracts?

If adequate language is incorporated into the standard contract to ensure that selecting the renewable avoided cost price requires the QF to transfer the non-energy attributes to the utility in periods of renewable resource deficiency, then amending OAR 860-022-0075 is not necessary.[30]

Issue 3: Schedule for Avoided Cost Price Updates

3A. Should the Commission revise the current schedule of updates at least every two years and within 30 days of each IRP acknowledgment?

To increase the accuracy of avoided cost prices, it is critical that inputs to the avoided cost calculation be updated as often as practical. For standard avoided costs prices, including those for renewable QFs, PacifiCorp recommends an annual update using assumptions consistent with the most recently filed integrated resource plan (IRP) or IRP update, as well as an update within 30 days following Commission acknowledgment of an IRP.[31] If updates are done on an annual basis, PacifiCorp supports a fixed filing date, but requests a date in the fourth quarter to avoid conflicts with other annual filings.[32]

For standard avoided cost prices, many parties have proposed that only certain inputs, namely market prices (gas and electricity), execution of contracts, and changes in load forecasts, be updated in the annual update. PacifiCorp supports limiting the inputs that are updated annually. But in addition to these inputs, it is critically important to also update the timing of the resource deficiency period, to the extent necessary, in an annual update. If the resource deficiency period cannot be updated to coincide with the changes in load and resources then the ability to update for changes in load and contracts is simply not meaningful.[33]

For non-standard avoided cost prices, PacifiCorp recommends that inputs to the PDDRR Method be updated using the best information available at the time of the request to ensure retail

[30] PAC/400, Griswold/8-9.
[31] *See* PAC/300, Dickman/22.
[32] *Id.*
[33] PAC/300, Dickman/23.

customers are indifferent to the calculated avoided cost price.[34] PacifiCorp recommends that at the time a QF requests prices, forward market prices for electricity and natural gas be based on PacifiCorp's most recent official forward price curve, and purchase and sale contracts for energy and capacity—as well as contracts for wheeling, transportation of natural gas, and coal—be updated to include all executed transactions.[35]

3B. Should the Commission specify criteria to determine whether and when mid-cycle updates are appropriate?

3C. Should the Commission specify what factors can be updated in mid-cycle?

In docket UM 1129, the Commission acknowledged that mid-cycle avoided cost filings may be appropriate[36] but did not specify criteria to justify mid-cycle updates.

PacifiCorp urges the Commission to allow mid-cycle updates when there are known changes in a PacifiCorp preferred resource portfolio.[37] Using stale information from the last acknowledged IRP could result in the utility acquiring QF resources at prices that do not reflect the utility's known changes in resource needs.[38] The Commission has allowed such updates in the request for proposals (RFP) context: during PacifiCorp's 2011 RFP, PacifiCorp updated its load forecast and used it to update its resource needs assessment to support discontinuing the RFP because the resource was no longer needed.[39] The Commission should not require PacifiCorp to acquire QF resources on a different basis than PacifiCorp acquires its own resources.

For non-standard prices, PacifiCorp believes it is critical that all model inputs reflect the best information available at the time the request is made.[40]

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[34] *Id.* at 22.
[35] PAC/100, Dickman/22
[36] Order No. 05-584 at 29.
[37] *See* PAC/100, Dickman/20; PAC/300, Dickman/26-28.
[38] PAC/300, Dickman/27.
[39] *Id. See In the Matter of PacifiCorp Request for Approval of Final Draft 2011 All Source Request for Proposals,* Docket UM 1540, Chief Administrative Law Judge Michael Grant Ruling (Oct. 3, 2012).
[40] *See* PAC/100, Dickman/22.

3E. Are there circumstances under which the Renewable Portfolio Implementation Plan should be used in lieu of the acknowledged IRP for purposes of determining renewable resource sufficiency?

PacifiCorp proposes that the RPS Implementation Plan should not be used in lieu of the acknowledged IRP to determine renewable resource sufficiency for purposes of setting an avoided cost rate.[41]

Issue 4: Price Adjustments for Specific QF Characteristics

4A. Should the costs associated with integration of intermittent resources (both avoided and incurred) be included in the calculation of avoided cost prices or otherwise be accounted for in the standard contract? If so, what is the appropriate methodology?

PacifiCorp proposes that the costs associated with integration of intermittent resources be included in the calculation of standard and non-standard avoided cost prices. Although PacifiCorp is generally opposed to distinguishing standard avoided cost rates based on resource-specific characteristics, PacifiCorp supports the Commission's conclusion that the distinction between intermittent and non-intermittent resources is a useful one.[42] Integration costs will not be included in the renewable avoided cost pricing option during the deficiency period, because during deficiency periods the proxy wind resource will also incur wind integration costs.[43]

PacifiCorp proposes to calculate the cost of integrating intermittent resources on its system by relying on its wind integration analyses, most recently its 2012 Wind Integration Study. These studies are based on company operational data and are used in the IRP and to set rates in general rate cases and should form the basis for the integration costs used in the calculation of renewable avoided costs.[44] PacifiCorp proposes that integration costs be incorporated into avoided costs for all types of intermittent resources.[45]

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[41] *Id.* at 19.
[42] Order No. 11-505 at 5.
[43] PAC/100, Dickman/17.
[44] *See* PAC/100, Dickman/18. For solar resources, PacifiCorp's wind integration study is the closest estimate of the costs to integrate intermittent resources on PacifiCorp's system, and thus PacifiCorp proposes using the results of its wind integration study for both wind and solar resources. *See id.* at 19; PAC/300, Dickman/32-34.
[45] PAC/300, Dickman/32.

Non-standard prices should also be adjusted to reflect the cost of integration. For non-standard prices determined by the PDDRR method, the cost of integration under PacifiCorp's proposal would be calculated annually by GRID based on the additional reserves required to regulate and follow wind as identified in PacifiCorp's most recent wind integration study.

4B. Should the costs or benefits associated with third-party transmission be included in the calculation of avoided cost prices or otherwise accounted for in the standard contract?

PacifiCorp proposes that the costs or benefits of third-party transmission be attributed to the individual QF and reflected in the contract as an addendum to the relevant QF contract.[46] This issue was fully briefed in docket UE 235, where PacifiCorp proposed modifications to its standard contract to account for third-party transmission costs. The legal question presented in that docket was whether PURPA is violated if PacifiCorp is required to pay standard avoided cost prices and also pay for third-party transmission costs to move QF output from the point of delivery to PacifiCorp load.[47] PacifiCorp's original filing addressed a unique situation where third-party transmission is needed to move excess QF generation out of a load-constrained area during periods of the year when the QF generation exceeded the amount of load in the load-constrained area or "load pocket."[48] These events are known as Excess Generation Events.[49]

Under PURPA and the Commission's rules implementing PURPA, customer indifference is ensured by relying on a "but-for" causation principle when determining the avoided cost rate and accompanying charges, such as interconnection costs.[50] This requires that costs that would not otherwise be incurred *but for* the purchase of the QF's energy and capacity must be recovered from the QF. Similar to interconnection costs, PacifiCorp would not incur third-party transmission costs to move QF output out of load pockets during Excess Generation Events but-

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[46] *See* PAC/200, Griswold/10.
[47] *In the Matter of Investigation into Avoided Cost Purchases from Qualifying Facilities – Schedule 37*, Docket UE 235, Administrative Law Judge Traci A.G. Kirkpatrick Ruling at 2 (October 5, 2011).
[48] PAC/200, Griswold/11-13.
[49] PAC/400, Griswold/29-30.
[50] 16 U.S.C. § 824a-3(b), (d); OAR 860-029-0010(1); OAR 860-029-0060; *see also Investigation into Avoided Cost Purchases from Qualifying Facilities—Schedule 37*, Docket No. UE 235, PacifiCorp Reply Brief at 6.

for the purchase of the QF's energy and capacity.[51] The current method for calculating the standard avoided cost—the Proxy Method—represents the Commission's determination of the full avoided cost. As noted earlier, the proxy resource is assumed to be optimally located relative to load.[52] This is simply because location specific factors, such as transmission or line losses, cannot be determined in the aggregate.[53] If PacifiCorp's customers are required to pay for third-party transmission expenses to wheel the QF's output out of a load pocket, then customers are subsidizing the QF. This violates PURPA.

Requiring QFs to pay for third-party transmission costs during Excess Generation Events is consistent with the Commission's findings in Order No. 05-584 in docket UM 1129.[54] PacifiCorp's proposal would not materially increase the transactional costs associated with the negotiation of a standard contract because PacifiCorp is not proposing a modification to the avoided cost rate. PacifiCorp's proposal is consistent with the Commission's current approach to small QFs, which contemplates some individual negotiation, as long as it is "specifically delineated and bounded."[55]

In addition, the Commission is not prohibited under FERC's regulations implementing PURPA from permitting a utility to assess third-party transmission charges directly attributable to a QF.[56] Under 18 CFR § 292.303(d), a utility is required to purchase QF output and deliver it to load. PacifiCorp is not proposing that it has no obligation to deliver QF output to load. Instead, PacifiCorp is proposing to recover third-party transmission costs outside of the avoided

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[51] PAC/400, Griswold/11.
[52] PAC/100, Dickman/5.
[53] *See* UE 235, PacifiCorp Reply Brief at 10.
[54] Order No. 05-584 at 16 (standard contracts "are intended to be used as a means to remove transaction costs associated with QF contract negotiations, when such costs act as a market barrier to QF development.")
[55] *Id.* at 39.
[56] In its reply testimony, Threemile Canyon Wind, LLC (Threemile Canyon) argues that whatever decisions the Commission may reach in this proceeding, the Commission should state that changes in policy are prospective only and that this proceeding is not intended to alter or ameliorate the legal obligations that PacifiCorp had to Threemile Canyon in 2009. *See* Threemile/200, Harvey/18. The impact of the legal and policy issues to be resolved in this docket on Threemile Canyon's contract, specifically, is directly at issue in Threemile Canyon's complaint against PacifiCorp in docket UM 1546. Docket UM 1546 is stayed pending the outcome of this proceeding. Therefore, the Commission should not resolve in this docket the application of the Commission's policy decisions on Threemile Canyon's stayed complaint. *See also Administrative Law Judges Traci A.G. Kirkpatrick and Shani Pines' Ruling* (April 30, 2013).

cost rate. This is similar to other types of costs that are recoverable from QFs outside of the avoided cost rate. As an example, under the Commission's rules, the utility constructs, owns, operates, and maintains interconnection facilities.[57] However, QFs are required to pay for the reasonable costs of interconnection facilities.[58] These are costs incurred directly by the interconnecting utility and recovered outside of the avoided cost rate.[59] The rationale underlying Commission's rules supports PacifiCorp's proposal.

4C. How should the seven factors of 18 CFR 292.304(e)(2) be taken into account?

PacifiCorp proposes applying the PDDRR Method to determine non-standard avoided costs. This methodology accounts for the resource-specific characteristics identified by 18 C.F.R. § 292.304(e)(2), as well as additional relevant, resource-specific factors, such as the QF's location, delivery pattern, and capacity contribution.[60] However, PacifiCorp proposes that, consistent with the Commission's rejection of adjustments to standard QF avoided costs in Order No. 05-584, the Commission should decline to adopt adjustments to standard avoided cost rates.[61]

Issue 5: Eligibility Issues

5A. Should the Commission change the 10 MW cap for the standard contract?

PacifiCorp proposes that the current 10 MW cap for the standard contract be lowered to 3 MW.[62] Lowering the cap would help mitigate a number of issues before the Commission, including the disaggregation of large single projects into multiple projects, because it would be much more difficult for smaller projects to disaggregate.[63] In docket UM 1129, the Commission concluded that a 10 MW cap was reasonable given its need to balance the interest in reducing

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[57] OAR 860-082-0035(2).
[58] *Id.*
[59] *Investigation into Interconnection of PURPA Qualifying Facilities With Nameplate Capacity Larger than 20 MW to a Public Utility's Transmission or Distribution System*, Docket UM 1401, Order No. 10-132 at 3; *see also* OAR 860-029-0060.
[60] *See* PAC/100, Dickman/9-11.
[61] PAC/300, Dickman/35-40.
[62] *See* PAC/200, Griswold/20-21.
[63] *Id.* at 15-16.

market barriers for QFs with the goal of ensuring that a utility pays a QF no more than its avoided costs.[64] Since Order No. 05-584 was issued, PacifiCorp's experience has been that QFs over 3 MW generally have technical, business, and legal experts engaged in the analysis, development, and contracting phases of their project.[65] This is an indication that these QFs do not face significant market barriers. In addition, a 3 MW cap would continue to encourage the development of community-scale QF resources.

5B. What should be the criteria to determine whether a QF is a "single QF" for purposes of eligibility for the standard contract?

PacifiCorp proposes that the partial stipulation adopted in docket UM 1129 should be modified to remove the passive investor exception.[66] The purpose and intent of the partial stipulation was to develop a mechanism that would give independent family or community-based QF projects an exemption from the single-site restriction so that these projects could share common infrastructure and have common passive investors without violating PURPA or state regulations.[67] In practice, however, the passive investor exception has allowed large projects to circumvent the intent of the partial stipulation and devise ownership structures that allow them to disaggregate and still technically meet the Commission's eligibility criteria.[68]

PacifiCorp therefore recommends the Commission eliminate the passive investor exception and allow an exemption *only* for independent family or community-based projects. This would prevent abuse of Commission policy through disaggregation. If the Commission decides to retain the passive investor exception, PacifiCorp requests that it consider ways to ensure that the intent of the exception—to allow independent family or community-based projects to share common infrastructure and have common passive investors—is appropriately effectuated.[69]

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[64] Order No. 05-584 at 4.
[65] PAC/400, Griswold/17.
[66] *See* PAC/200, Griswold/25.
[67] *Id.* at 23.
[68] *Id.* at 23-24.
[69] *Id.* at 25-26.

5C. Should the resource technology affect the size of the cap for the standard contract cap or the criteria for determining whether a QF is a "single QF?"

Wind and photovoltaic solar resources are capable of disaggregating into multiple projects.[70] Lowering the standard avoided costs eligibility cap to 3 MW and removing the passive investor exception discussed under issue 5B would significantly mitigate the problem of disaggregation of large projects.

Issue 6: Contracting Issues

6B. When is there a legally enforceable obligation?

Under PURPA, a QF may sell to a utility either under a contract, or through a legally enforceable obligation (LEO).[71] An LEO may be established when a QF commits itself to sell to an electric utility.[72] Individual states determine when a legally enforceable obligation is incurred under state law.[73] The purpose of the LEO is to prevent the utility from avoiding purchasing from a QF by refusing to sign a power purchase agreement with the QF as well as to establish a threshold standard a QF must meet in order to qualify to sell to a utility.[74] In some instances, PacifiCorp has experienced QFs attempting to establish an LEO through various means, including simply downloading a form contract, signing it, and sending it to PacifiCorp.[75] Therefore, criteria for establishing an LEO should be clear, provide certainty for both the utility and the QF, and to the extent possible, prevent both the utility and the QF from attempting to frustrate or manipulate the establishment of a LEO. PacifiCorp contends that it is reasonable to establish that an LEO has arisen when the QF approves the final draft contract as contemplated in section B(5) on page 10 of Schedule 37.[76] This ensures that an LEO is established only after the QF and utility have engaged in contract negotiations (for non-standard contracts) and

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[70] *Id.* at 26.
[71] *Cedar Creek Wind, LLC*, 137 F.E.R.C. P 61,006, at 8 (Oct. 4, 2011).
[72] *Murphy Flat Power, LLC*, 141 F.E.R.C. P 61,145 at 5 (Nov. 20, 2012).
[73] *West Penn Power Co.*, 71 F.E.R.C. P 61,153at 13 (May 8, 1995).
[74] PAC/200, Griswold/26; *See* Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, 45 FR 12214, 12224, F.E.R.C. Order No. 69 (Feb. 25, 1980).
[75] PAC/200, Griswold/26.
[76] *Id.* at 27-31.

exchanged critically important commercial, safety, and resource planning information.[77] Establishing the LEO when the QF approves the final draft contract is also reasonable in the context of specific requirements and timelines contained in Schedule 37, which restrict PacifiCorp's ability to frustrate the establishment of an LEO through extended negotiations.[78]

6E. How should contracts address mechanical availability?

PacifiCorp currently uses an output guarantee, rather than a mechanical availability guarantee (MAG) for all QF resources except wind QFs and QFs delivering power on a non-firm basis.[79] There is currently no industry standard MAG for wind projects, although it is widely believed that the North American Electric Reliability Corporation will require owners of wind project to report outage data in the future.[80] PacifiCorp recommends increasing the MAG in its standard QF contracts. Specifically, for new wind QF contracts, the Guaranteed Availability should be increased from 0.875 to 0.90 for contract year three and all remaining contract years for the term of the contract. For existing QF projects that are renewing a contract or have previously had a contract with another utility, the Guaranteed Availability should be set at 0.90 starting in contract year one. In PacifiCorp's experience, wind QFs have consistently demonstrated an ability to meet these levels of Guaranteed Availability after excluding hours lost to force majeure and scheduled maintenance.[81]

In addition, PacifiCorp's current definition for availability in its standard QF contract allows 240 hours per year per wind turbine for scheduled wind turbine maintenance. PacifiCorp proposes reducing this to 60 hours per wind turbine. PacifiCorp's recent experience demonstrates that this change is reasonable.[82]

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[77] *Id.* at 29.
[78] *Id.* at 28.
[79] *Id.* at 2. PacifiCorp would prefer an output guarantee over a MAG even for wind QFs, but PacifiCorp has found that wind QFs are unwilling or unable to provide an output guarantee and will only provide a MAG. *Id.* at 3.
[80] *Id.* at 3-4.
[81] *Id.* at 4.
[82] *Id.* at 5.

6I. What is the appropriate contract term? What is the appropriate duration for the fixed price portion of the contract?

The Commission has noted that the fundamental objective of the contract terms is to "establish a maximum standard contract term that enables eligible QFs to obtain adequate financing, but limits the possible divergence of standard contract rates from actual avoided costs."[83] PacifiCorp believes that the existing 15-year *fixed price* portion of the allowed contract term tips the balance too far to one side, and proposes that the initial fixed-price portion of the contract term be reduced to 10 years.[84] This proposal would provide the QF with certainty in the early years, while aligning future QF contract prices with prices closer to actual avoided costs. PacifiCorp's experience shows that a shorter term for the fixed-price portion would not adversely affect the QFs ability to secure financing.[85]

II. CONCLUSION

PacifiCorp respectfully requests that the Commission consider the proposals contained herein.

Respectfully submitted this 20th day of May, 2013.

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[83] Order No. 05-584 at 19.
[84] PAC/200, Griswold/32.
[85] *Id.* at 32-33 (detailing PacifiCorp's experience with a wide variety of new QF projects, most of which elected for shorter-term contracts).