**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1610**

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| In the Matter of<br><br>PUBLIC UTILITY COMMISSION OF OREGON<br><br>Investigation Into Qualifying Facility Contracting and Pricing. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | RENEWABLE ENERGY COALITION<br><br>POST-HEARING BRIEF<br><br>PHASE II |

## I. INTRODUCTION

Pursuant to the Administrative Law Judges' September 16, 2015 Ruling, the Renewable Energy Coalition (the "Coalition") submits this post-hearing brief addressing the Phase II issues in this investigation into qualifying facility ("QF") contracting and pricing under the Oregon and federal Public Utility Regulatory Policies Acts ("PURPA"). The Coalition recommends that the Oregon Public Utility Commission (the "Commission" or "OPUC") carefully consider the devastating practical and real world impact its resolution of each of the issues can have on certain QFs.

The Commission should ensure that non-utility owned power, including QFs, remain at least a small but important part of the state's renewable energy future. This will require the Commission to prevent the utilities from eroding or eliminating many of the beneficial policies that were adopted in the last major PURPA investigation (UM 1129) and Phase I of this investigation, and making the incremental, but important changes in Phase II.

Adoption of the utilities' recommendations in this case could effectively allow them to routinely set prices below their actual avoided costs, prevent Staff or intervenors from challenging their reasonableness, and impose costly, burdensome and unnecessary requirements in both the standard and non-standard contract completion process. Put in simple and stark terms, many baseload renewable energy QFs that have been selling power to the utilities for years are already at risk of closure, and the Commission should not provide additional encouragement to the utilities to develop new and creative efforts to avoid purchasing non-utility owned renewable resources. Ratepayers will also be harmed if the utilities no longer purchase reliable and cost effective non-utility owned renewable power. The best way to avoid future disputes and abuses by utilities or QFs is to adopt clear policies that limit the utilities' discretion and opportunities to stonewall and impose unreasonable contract terms and rates.

## II. ARGUMENT

### 1. Parties Should Be Provided a Fair Opportunity to Review and Challenge Avoided Cost Rates

At its heart, the Coalition and the other QF parties are making a relatively simple request in this proceeding: the Commission should provide Staff, QFs and other parties a fair opportunity to review, challenge, and obtain Commission resolution of all disputed avoided cost rate issues. The Coalition recommends that the review of disputed avoided cost rate inputs and assumptions occur at the same time as the Commission's analysis of the utilities' integrated resource plans ("IRPs") because it will ensure that the rates are consistent with an acknowledged IRP, the rates are approved more quickly, and that all

issues are fully addressed, especially the impact of various IRP inputs and results on avoided costs.[1]

PacifiCorp takes the most extreme position of any party arguing that no one should have a real opportunity to litigate, challenge, or obtain Commission resolution of avoided cost rate issues. PacifiCorp asserts that there should be no post avoided cost rate filing review because parties can already "review" avoided cost rate inputs and assumptions in its IRP. PacifiCorp Pre-hearing Brief at 14-18. PGE would allow a post-filing review, but only to ascertain whether the inputs and assumptions are consistent with what they unilaterally selected to include in their IRP. PGE Pre-hearing Brief at 6-7; PGE/700, MacFarlane-Morton/5-6. Idaho Power also proposes that there be no automatic post-filing review, but at least suggests that avoided cost rates can be reviewed if Staff or QFs file complaint. Idaho Power Pre-hearing Brief at 4-5.

PacifiCorp wants parties to be able to "review" avoided cost rate assumptions and inputs in the IRP by conducting discovery and submitting comments, because this allegedly allows the parties the ability to "influence" the company's decisions. PacifiCorp Pre-hearing Brief at 18. PacifiCorp does not want "the adversarial litigation of IRP inputs during the IRP process itself," which means that they do not want anyone to be able litigate any avoided cost rate issues at all. Id. at 14. The Coalition does not have such a high opinion of our persuasiveness that we believe that we can convince or "influence" the company to make the right decision. Being able to conduct discovery,

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[1] The dispute regarding challenging avoided cost rate inputs and assumptions is regarding updates other than the annual update on May 1. These filings should be a more limited and narrow update, which hopefully will make it more difficult for the utilities to include inappropriate rate changes.

submit comments and respectfully request that a utility change its mind is meaningless without the ability to have a neutral decision maker like the Commission resolve any disagreements.

The utilities, however, raise some legitimate concerns about the consistency between an acknowledged IRP and avoided cost rates. The Coalition recognizes that there are valid reasons to want consistency between the inputs and assumptions in the IRP and other regulatory matters, including avoided cost rates. The solution to this problem is not to preclude any opportunity to challenge the inputs and assumptions in the IRP, but to establish a process in which they are reviewed simultaneously for both IRP and avoided cost rate purposes.

Staff fundamentally agrees with the Coalition and the Community Renewable Energy Association ("CREA") that parties should be allowed to challenge inputs and assumptions from the IRP, but recommends that the review should occur after IRP acknowledgement. Staff Pre-hearing Brief at 24. Staff believes that the IRP "is the best indicator of what costs the utility will actually avoid", but that litigating the assumptions "prior to the time the Commission reviews the utilities' planned resource actions turns the determination of avoided cost prices on its head." The Coalition is not proposing that inputs and assumptions be reviewed "prior" to the IRP, but at the same time as the IRP. This simultaneous review can only improve the ability of the IRP to accurately estimate what costs the utility will avoid.

If the Commission adopts Staff's recommendation for a post-IRP review, then it should ensure that the process is robust and fair to Staff, QFs, other interested parties, and the utilities by:

- Reaffirming that the utilities must establish by at least a preponderance of the evidence that their proposed avoided cost rates are just and reasonable.

- Concluding that the utilities avoided cost filing should generally be consistent with prior Commission methodologies and include inputs, assumptions, calculations, and methodologies from the most recently acknowledged IRP. The utility should have the discretion to depart from the IRP, but must identify and explain the change.

- Consistency with a portion of a specifically acknowledged part of an IRP may be evidence in support of reasonableness of avoided cost rates, but it should not be a guarantee that the rates will be approved.

- Finally, any party should be allowed to challenge any input or assumption on the grounds that they would not produce just and reasonable avoided cost rates, regardless of whether they are consistent with an acknowledged IRP.

PacifiCorp and PGE want to preclude or limit review of avoided cost rates and assumptions in a post-IRP compliance filing to avoid redundancy and to prevent "relitigation of IRP inputs in a separate forum . . ." PacifiCorp Pre-hearing Brief at 14; PGE Pre-hearing Brief at 5-7. If the review of the IRP is not expanded, then a post-IRP proceeding would not be "relitigation" or "redundant," but the first and only "litigation." PacifiCorp and PGE essentially want to preclude any litigation before or after the filing of avoided cost rates, which would ensure they can unilaterally choose the inputs and assumptions (and thereby unilaterally set the rates). The disputes about the meaning of the IRP can be eliminated or at least minimized if the IRP and avoided cost rates are reviewed at the same time.

PacifiCorp supports its view that QFs should not be able to challenge avoided cost rates because the Commission concluded that it is not legally required to hold a hearing. PacifiCorp Pre-hearing Brief at 21 (citing Re Investigation to Determine if Pacific Power's Rate Revision Is Consistent with the Methodologies and Calculations Required by Order No. 05-584, Docket No. UM 1442, Order No. 09-427 (Oct. 28, 2009)).

Ironically, in the proceeding cited by PacifiCorp, the Commission concluded that it would hold an evidentiary hearing on certain avoided cost rate issues. UM 1442, Order No. 09-506 at 3.

PacifiCorp also ignores that the Commission has always provided parties some sort of opportunity to review and obtain Commission resolution of avoided cost rate disputes. In recent years, the Commission has either scheduled an evidentiary hearing or addressed issues at a public meeting. This is consistent with the Commission's rules that specifically provide that avoided cost rates are subject to suspension and modification similar to retail customer rates. OAR § 860-029-0080(6).

PacifiCorp also opposes a protracted post-filing review because it can result in "stale" avoided cost rates. PacifiCorp Pre-hearing Brief at 22. PacifiCorp complains that the avoided cost rates the company filed in April 2014 resulted in a long delay that allowed QFs to lock in inaccurate rates. Id. PacifiCorp fails to note that its April 2014 filing was controversial because of a long list of procedural and substantive errors, including filing earlier than allowed under the law, using non-acknowledged IRP inputs and assumptions, and proposing numerous changes inconsistent with Commission precedent. See Docket No. UM 1610, Order No. 14-295, at Appendix A at 2-4 (Aug. 19, 2014); UM 1610, Order No. 14-148 at Appendix A at 2-3 (April 30, 2014). Before filing its April 2014 update, REC informed PacifiCorp that it would support expeditious review of the rates if PacifiCorp filed a normal update promptly after IRP acknowledgement without the controversial changes related to compliance with the Phase I order in this case. If PacifiCorp had taken the approach outlined in the Commission's rules, then there

could have been a quick approval of its avoided cost rates, as the company almost always obtains.

Idaho Power raises similar concerns, suggesting that the utilities' filed avoided cost rates be allowed to go into effect without review, but they can be subject to a challenge later. Idaho Power Pre-hearing Brief at 4-5. The Commission should reject Idaho Power's recommendation because avoided cost rates should never be allowed to go into effect until they have been reviewed and found just and reasonable. See ORS § 758.515(2)(b).

The utilities also oppose Staff and REC's proposed minimum filing requirements ("MFRs"). If the utilities were truly concerned about obtaining an expeditious approval of avoided cost rates, then they would not oppose the concept of MFRs. The utilities' apparent goal is to preclude and limit review of avoided cost rates issues as much as possible, and they oppose the MFRs because they facilitate a complete and prompt review by Staff and intervenors.

**2. The Commission Should Reject PacifiCorp's Proposal to Set Large QF Rates with a Complex and Burdensome Computer Model**

The Commission should maintain its current policy of requiring PacifiCorp and large QFs to negotiate rates based on Commission approved criteria rather than a computer model. PacifiCorp's approach will likely result in the company arbitrarily revising inputs, assumptions, and methodologies to unilaterally lower large QF rates. This will increase the costs and disputes in the negotiation process, and risk closing the last couple large Oregon QFs. Finally, it is particularly inappropriate to change how large QF avoided cost rates are set when PacifiCorp and Idaho Power are proposing to

lower the size threshold for wind and solar QFs to 100 kilowatts, which would result in a massive expansion of the number of projects considered "large" in Oregon.

PacifiCorp claims that the current method is flawed because it can produce inaccurate results. PacifiCorp Pre-hearing Brief at 33. Don Schoenbeck, who represented both ratepayers (who generally want the model to produce lower prices) and QFs (who generally want the model to produce higher prices) compared the company's computer model approach with the Commission's current methodology. Coalition/200, Schoenbeck/8-12. Mr. Schoenbeck concluded that approaches should produce similar results, if done correctly. Id. PacifiCorp "agrees that" they "can produce similar results, but" that they can also produce different results based on different "circumstances." PAC/300, Dickman/13.

PacifiCorp's model will produce more precise results, but that does not mean that they will be more accurate. Any model has some black box elements to it, and PacifiCorp's GRID model is no exception. QFs will either need to simply trust the company, or hire an expert to acquire and run the model to assure that the methodologies accurately forecast actual costs, all inputs are true inputs and not hard-wired into the model runs, mistakes were not made, and numerous other factors.

The most relevant different "circumstances" will not be the project's operational characteristics, but the company's ability to change and tailor the model to lower avoided cost rates. PacifiCorp points to the use of the GRID model in its power cost cases as evidence in support of using the same model for avoided cost rates. PacifiCorp Pre-hearing Brief at 33-35. The continuous, voluminous and expensive litigation associated

with the company's power cost cases should be a stark warning of what QFs and the Commission can expect if the company is able to use the model to set large QF rates.

In the end, the Commission should consider the practical impact of its decision. There are currently only two large Oregon QFs, both of which are biomass projects that help to prop up the stagnant rural Oregon economy (20 MW Roseburg Forest Products, and 32 MW Biomass One QFs). See Coalition/102, Lowe/7, 9. The Commission should not raise new and unnecessary obstacles to their continued operation that will not increase the rates' accuracy.

### 3. The Commission's Legally Enforceable Obligation Policies Should Protect QFs from Utility Abuse in the Contract Completion Process

PacifiCorp's brief mischaracterizes the positions of other parties regarding legally enforceable obligations, and creates ridiculous caricatures that it can juxtapose with its seemingly reasonable position. With only citations to its own testimony, PacifiCorp claims that the QF parties want to allow QFs to lock in rates early "to avoid providing mandated informational requirements, or to allow a QF to bypass timelines and procedures laid out by a state commission for establishing the right to a PPA . . . ." PacifiCorp Post-hearing Brief at 37, 44-45. In reality, the Coalition has proposed a fair and balanced modification to the utilities' rate schedules that would require QFs to follow the Commission's established process, but provide QFs with the ability to resolve disputes without losing their rights to then current avoided cost rates, and minimize the need for resolution through the complaint process.

Separately, the Commission should not discriminate against existing QFs by requiring them to enter into contracts shortly before then-current contract expiration,

which is significantly less than new QFs. PacifiCorp agreed earlier in this case that at least new QFs should be able to enter into a contract up to three years before commercial operation. The Coalition understood this policy would apply to all QFs.

The purpose of this policy is to allow QFs to be able to obtain financing and price certainty to be able to construct or upgrade generation facilities and interconnections, which can take more than two years. Existing QFs have similar needs, especially when they need to modernize generation or interconnection facilities or otherwise improve project performance and operations. The Commission should reject PacifiCorp's proposal because it would prevent many existing QFs from making these investments that benefit the projects, the environment, their local communities, and ratepayers. Some projects may need to close their operations if they are prevented from entering into new contracts that allow them sufficient time to update or completely refurbish their interconnection and generation facilities.

### A. QFs Should Be Able to Resolve Disputes Without Losing Their Rights to Then Current Avoided Cost Rates

Despite multiple opportunities, PacifiCorp appears not to have read the Coalition's testimony. PacifiCorp's witness Bruce Griswold made similar claims in his response testimony (without citation). Coalition/600, Lowe/13. In reply, Coalition witness John Lowe explained and quoted his original testimony stating:

> That **both** the QF should be required to follow the Commission approved process in the utility's avoided cost rate schedule. Contrary to Mr. Griswold's interpretation, I specifically recommended that "QFs should not be allowed to simply fill out and sign a draft contract in order to establish a legally enforceable obligation" and "QFs should be **required to provide complete information** so that the utility can prepare a draft contract." Coalition/400, Lowe/27 (emphasis added). A QF should only be allowed to form a legally enforceable obligation "if negotiations reach

> an impasse **after the QF complies with these initial requirements**." Id. (emphasis added).

Coalition/600, Lowe/14 (emphasis in original). Bolding and underlining the Coalition's recommendation that a QF be required to follow the established procedures and provide required information was apparently not sufficient to obtain PacifiCorp's notice.

The Commission can read for itself the Coalition's actual proposal, which is Exhibit Coalition/404. The Coalition recommends maintaining the first four steps of PacifiCorp's Schedule 37, which requires the QF to provide all required information, and provide the company with reasonable additional information. If there is a dispute after the QF complies with these steps, then the Coalition recommends that the QF and the Company must take at least fifteen business days to attempt to resolve any disputes or disagreements. Coalition/404, Lowe/1. After these considerable negotiations elapse and a dispute remains, then the Coalition recommends that "the owner can commit itself to sell power under then current rates and its proposed contract terms and conditions." Id.

While there may be circumstances that warrant an exemption from these requirements, the Coalition's basic approach is to require both parties to follow the Commission established process and attempt to resolve any dispute before a legally enforceable obligation can occur. Despite PacifiCorp's attempt to fabricate straw man proposals, the Coalition is not aware of any party in this proceeding that is arguing that QFs should be able to create a legally enforceable obligation by failing to provide reasonable information, simply signing contracts without project specific information, or taking other unreasonable actions.

The Coalition's proposal will allow a QF to commit themselves to their proposed terms and conditions at current rates, and either continue negotiations with the utility, or seek Commission resolution of its dispute without fear of losing its rights to then current avoided cost rates. If the QF files a complaint, and the Commission agrees with the QF that the utility unreasonably delayed negotiations, imposed inappropriate or unapproved terms and/or conditions, or strayed from the approved process and timelines, then the QF's avoided cost rates should be those in effect at the time the dispute began.

Similarly, if the Commission rules against the QF, then the parties should "returned to the point at which negotiations broke down. In other words, the QF must accept the condition or requirement in order to maintain the avoided cost rates, which is what would have happened if the QF had not filed a complaint and had agreed to the condition in the first place." Coalition/600, Lowe/15.

If QFs cannot resolve disputes without losing their rights to the then current avoided cost rates, then the utilities will be able to force them to agree to unreasonable restrictions or delays. Similarly, if the Commission adopts the utilities' unreasonable recommendations, then it will encourage QFs to take their disputes to FERC. The Coalition's "recommendation simply intends to provide the QF with the same rights and obligations that it would have if the negotiation process happened in the manner in which it is intended." Id. In other words, a QF should not lose its right to then current avoided cost rates because it attempted to informally or formally resolve a dispute.

### B. Existing and New QFs Should Have the Same Amount of Time to Enter into New Contracts

PacifiCorp also argues that existing QFs should be treated worse than new QFs and be unable to enter into new contracts up to three years before their existing contracts expire. PacifiCorp Pre-hearing Brief at 45. Although the company did not make this proposal early in the case, PacifiCorp now argues that an existing QF should not be allowed to enter into a new contract more than a year before expiration of their current contract. First, the Commission need not resolve this issue as PacifiCorp did not raise it until late in the case. However, if the Commission addresses the issue, then it should allow both new and existing QFs the **same** amount of time to enter into new contracts.

The Coalition cannot emphasize enough how strongly we disagree that one year is sufficient time for all existing QFs to enter into new contracts. The Coalition agrees that a year could be a sufficient amount of time for many existing QFs, especially those that have no changes in their operations, or do not need to modernize or upgrade their facilities and equipment. In some circumstances, however, it may be impossible for some existing QFs to continue generating power if they cannot enter into a new contract more than two years before their current contract expires.

Many existing QFs need to make significant generation and interconnection upgrades, including major construction or the entire replacement of generators or interconnection facilities. Even when there are only modest project changes, existing projects have financing and planning needs and time horizons very similar to those of proposed projects. These upgrades can increase efficiency, reliability, safety, reduce harmful environmental impacts, comply with environmental and other regulatory requirements, and promote water conservation. In addition to the unnecessary loss of

revenues and environmental harm, the failure to make some of these changes can result in the projects shutting down.

These changes are often significant in terms of financial, process, and timing considerations. Existing QFs typically make plans and attempt to obtain financing at the time of a new contract renewal because that is the time they know what their long-term project revenues will be. The new power purchase and interconnection agreements often expire at the same time, which can also result in the need to re-negotiate both contracts as well as make significant interconnection upgrades.

In order to obtain financing for these upgrades, existing facilities need to be able to enter into new contracts **before** construction will take place. Construction upgrades can take more than **two years**. If construction takes more than two years and a QF needs a contract to obtain financing for the construction, then PacifiCorp's proposal would essentially preclude some existing projects from being able to finance project upgrades and interconnections. Therefore, the practical impact of PacifiCorp's proposal would be to raise any unnecessary barrier to the continued operations of many projects, and could lead to **the shutting down of some existing projects**.

**4. Other Issues**

The Coalition has not changed its recommendations in its pre-hearing brief, which addressed many of the arguments raised by the utilities. In addition, other post-hearing briefs more fully support the Coalition's positions. For example, the Coalition is joining the post-hearing brief on prices during the sufficiency period with CREA, Obsidian and OneEnergy. The Coalition's positions on the remaining issues in the case are:

- Issue: Whether the market prices used during the resource sufficiency period compensate for capacity?

  Coalition recommendation: No. The Commission should revise the methodology for calculating avoided cost rates during the resource sufficiency period to include the utilities' planned capacity costs during the sufficiency period, whether these costs come from extensive market purchases or environmental upgrades.

- Issue: How should third-party transmission costs to move QF output in a load pocket to load be calculated and accounted for in the standard contract?

  Coalition recommendation: The QF should be provided key load pocket information early in the contract formation process, and should have the right to require that the utility acquire the lowest cost reliable transmission to move their net output to the utility's load. Existing QFs should be grandfathered and should not have to pay third party transmission costs that they did not cause to be incurred.

- Issue: Who owns the Green Tags during the last five years of a 20-year fixed price PPA during which prices paid to the QF are at market?

  Coalition recommendation: QFs should not be required to transfer the Green Tags or the renewable energy certificates to the utility during the last five years of a twenty year power purchase agreement because the rates paid during this period are not based on the costs of a renewable resource.

- Issue: Should avoided transmission costs for non-renewable and renewable proxy resources be included in the calculation of avoided cost prices?

  Coalition recommendation: Avoided transmission costs for both non-renewable and renewable proxy resources should be included in the avoided cost rates. This is consistent with the Commission's policy of allocating third party transmission costs to QFs, and that avoided cost rates should be based on the costs of resources that the utility would acquire but for the acquisition of power from a QF.

- Issues: Should the Commission revise the methodology approved in Order No. 14-058 for determining the capacity contribution adder for solar QFs selecting standard renewable avoided cost prices? If so, how? Should the capacity contribution calculation for standard non-renewable avoided cost prices be modified to mirror any change to the solar capacity contribution calculation used to calculate the standard renewable avoided cost price?

  Coalition recommendation: Both renewable and non-renewable QFs should be fully paid the capacity value they provide to the utilities, and the inappropriate

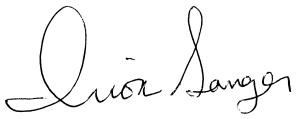
double discount related to the capacity payments for intermittent QFs should be fixed.

## IV. CONCLUSION

The Coalition has strived to accommodate the legitimate interests of both QFs and utilities by developing practical and balanced proposals for PURPA's implementation. This is in stark contrast to the utilities positions, especially PacifiCorp, that would like provide themselves with an inordinate and inappropriate influence whether cost effective new and existing QFs can operate. For example, both QFs and utilities should follow reasonable contract completion steps that limit either party's ability to abuse the process. Similarly, the avoided cost rates for small and large QFs should allow adequate review and prompt rate updates. The Commission's current policies have already significantly benefited all the parties by providing clear guidance in numerous areas of PURPA implementation. The Commission should adopt the Coalition's recommendations in this proceeding because they will reduce disputes and prevent utilities from harming both QFs and ratepayers by unduly discriminating against non-utility owned renewable energy and ensuring they remain a part of Oregon's renewable energy future.

Dated this 13th day of October 2015.

Respectfully submitted,



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

Of Attorneys for the Renewable Energy Coalition