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October 13, 2015

VIA E-MAIL ONLY

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street, Suite 100
P.O. Box 1088
Salem, OR 97308-1088

Re: *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff Investigation into
Qualifying Facility Contracting and Pricing*
PUC Docket No.: UM 1610 / Phase 2
DOJ File No.: 330-030-GN0240-12

To the Filing Center:

On behalf of the Oregon Department of Energy, enclosed for electronic filing today with the Commission in the above-captioned matter is the OREGON DEPARTMENT OF ENERGY'S POST-HEARING BRIEF, PHASE II OF UM 1610.

Sincerely,

Renee M. France
Senior Assistant Attorney General
Natural Resources Section

RMF:jrs/#6848379

c: Wendy Simons, Oregon Department of Energy

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1610

In the Matter of)
)
PUBLIC UTILITY COMMISSION OF) OREGON DEPARTMENT OF
OREGON,) ENERGY POST-HEARING
) BRIEF, PHASE II UM 1610
Staff Investigation into Qualifying)
Facility Contracting and Pricing)

1 I. Introduction

2 This Post-hearing Brief is filed on behalf of the Oregon Department of Energy (Department)
3 pursuant to the direction from the Administrative Law Judge (ALJ) in Phase II of this
4 investigation into contracting and pricing for qualifying facilities (QFs) under the Public Utilities
5 Regulatory Policies Act of 1978 (PURPA).

6 States are allowed a “wide degree of latitude” in implementing PURPA provided utilities are
7 not obligated to pay generators more than the utilities’ avoided costs.¹ The State of Oregon has a
8 two-part goal relating to the development of QFs: 1) to “[p]romote the development of a diverse
9 array of permanently sustainable energy resources,” and 2) to “[i]nsure that rates for purchase by
10 an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract
11 be just and reasonable to the electric consumers of the electric utility, the qualifying facility and
12 in the public interest.”² This two-part goal balances encouraging QF development with protecting
13 ratepayers and was promulgated by the Oregon Public Utility Commission (Commission) in a

¹ California Public Utilities Commission, 133 FERC ¶61,059, 61,255 (2010).

² ORS 758.515(2).

1 previous docket, UM 1129.³ The Department's testimony in Phases I and II of this docket
2 supports maintaining the balance of this two-part goal.

3 The Department administers state programs that "promote the efficient use of energy
4 resources" and "develop permanently sustainable energy resources,"⁴ including programs that
5 encourage the development of QF projects.⁵ This Brief summarizes the Department's position on
6 each issue in Phase II of this docket for which the Department has offered testimony. Issues on
7 which the Department has taken no position are not included in this Brief.

8

9 II. Issues List

10 1. Who owns the Green Tags during the last five years of a 20-year fixed price PPA during 11 which prices paid to the QF are at market?

12 The Department's position on issue number one is that the qualifying facility (QF) should
13 own the Green Tags (also known as renewable energy certificates, or RECs) during the last five
14 years of the fixed-price power purchase agreement (PPA) when prices paid to the QF are at
15 market. The Department agrees with the Commission Staff position as expressed in Staff's Pre-
16 Hearing Memorandum that

17 *QFs are not compensated for the Green Tags associated with their*
18 *generation when they are paid market-based prices and should therefore own*
19 *the Green Tags when they are paid market-based prices, even if the utility is*
20 *renewable resource deficient.*⁶

³ *In the Matter of Public Utility Commission of Oregon Investigation into Staff Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket UM 1129, Order No. 05-584, page 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 the QF power by having utilities pay no more than their avoided costs.").

⁴ ORS 469.010.

⁵ Department programs that encourage QF development include the Small-scale Energy Loan Program, the Renewable Energy Development grant program, the Community Renewable Energy Feasibility Fund and tax credits for combined heat and power systems.

⁶ Staff Pre-hearing Memorandum, Docket UM 1610 Phase II, page 1 (September 2, 2015).

1 **3. Should the Commission revise the methodology approved in Order No. 14-058 for**
2 **determining the capacity contribution adder for solar QFs selecting standard**
3 **renewable avoided cost prices? If so, how?**

4 **and**

5 **4. Should the capacity contribution calculation for standard non-renewable avoided**
6 **cost prices be modified to mirror any change to the solar capacity contribution**
7 **calculation used to calculate the standard renewable avoided cost price?**

8
9 The Department's position on issues number three and four is that the Commission
10 should revise the methodology for determining both the Standard Renewable and Non-
11 renewable Avoided Cost prices. The Department agrees with Commission Staff that there is a
12 flaw in the methodology which results in double-discounting, and that under the current
13 methodology the QF is, in the case of solar resources, severely undercompensated for avoided
14 capacity. The flaw is clearly explained in Staff's response testimony in Phase I⁷ and opening
15 testimony in Phase II⁸ on this subject. The Department continues to support Staff's Proposed
16 Method, as outlined by Staff in their Pre-hearing Memorandum.⁹

17
18 **5. What is the appropriate forum to resolve litigated issues and assumptions?**

19 In its opening testimony, the Department proposed for the Commission to open two parallel
20 dockets in order to better address issues related to setting avoided cost prices, an integrated
21 resource plan (IRP) docket and an avoided cost docket that would run simultaneously and
22 conclude around the same time.¹⁰ In its reply testimony, the Department made changes to its
23 original proposal in response to the concern by PacifiCorp about bifurcating the Commission

⁷ Staff/400, Andrus/4-5 (Phase I, November 19, 2014).

⁸ Staff/500, Andrus/16-17.

⁹ Staff Pre-hearing Memorandum, Docket UM 1610 Phase II, pages 9-21 (filed September 2, 2015)

¹⁰ ODOE/700, Carver/5.

1 decision-making in the IRP regarding avoided cost issues and deficiency dates.¹¹ The Department
2 now proposes¹² a two part process to address issues related to setting avoided cost prices. The
3 first step would be for a utility to file both its IRP and its preliminary avoided cost prices at the
4 beginning of the IRP process. The preliminary avoided cost filing should include the minimum
5 filing requirements as proposed by Commission Staff¹³ with amendments proposed by the
6 Department.¹⁴ While the IRP docket would remain primarily an informational proceeding, filing
7 the preliminary avoided cost prices simultaneously with the IRP docket would allow parties to do
8 discovery on avoided cost issues and encourage comments on the inputs underlying the
9 calculation of avoided cost prices. The Commission would not be required to opine on avoided
10 cost issues as part of the IRP process, but comments from the parties could influence its decisions
11 on whether to acknowledge action items related to these issues.

12 As with the current process, there would be a second step where the utility makes its final
13 avoided cost filing. The Commission currently requires companies to make their avoided cost
14 filings within 30 days of an IRP acknowledgement order. The approval process for the avoided
15 cost prices would not change, although the utilities could change some of the dollar values for
16 avoided cost prices between their preliminary filing and their final filing in light of comments
17 received during the IRP process. The avoided cost docket would remain a contested case docket,
18 while the docket for the IRP/avoided cost filing would remain a comment-type docket rather than
19 a contested case docket.

20

¹¹ "Q. Do you support ODOE's suggestion to limit the IRP acknowledgement order to focus only on assumptions within four years of the IRP filing? A. No. As stated above, near-term decisions also depend on the long-term outlook. ODOE's suggestion appears to further bifurcate the IRP from an avoided costs process, which would lessen the value of the IRP in general." PAC/1500, Drennan/3; lines 10-14.

¹² ODOE/1100, Carver/4.

¹³ Staff/503, Andrus/1-2.

¹⁴ ODOE/900, Carver/8.

1 **Minimum Filing Requirements**

2 The Department supports Staff's Proposed Minimum Filing Requirements (MFRs) for both
3 the preliminary and final avoided cost filings, which would make the process quicker and
4 simpler with little cost to electric companies.

5 *Staff's proposed MFRs would require utilities to expressly identify the inputs used to*
6 *determine avoided cost prices and where stakeholders and Staff may find these inputs in*
7 *the utilities' IRPs.¹⁵*
8

9 None of the Pre-Hearing Briefs in this docket pointed to serious negative consequences from
10 this requirement.

11 **Consequences of Staff's Proposal to Maintain Other Elements of IRP and Avoided Cost**
12 **Procedures**

13 The Department contrasts its proposal with Staff's under the following possible scenario.
14 Suppose the deficiency date in the Integrated Resource Plan is beyond the action plan period,
15 which is a common occurrence in recent IRP filings. Under the current process, which Staff
16 recommends that the Commission continue to use with the addition of minimum filing
17 requirements,¹⁶ there is little discussion of whether that date is reasonable, because it does
18 not relate to Commission acknowledgement of action items. If parties discuss this issue only
19 in the avoided cost filing after the plan has been acknowledged, the discussion could reveal
20 that a major resource is needed in the action plan period. This discovery would raise
21 substantive questions about the acknowledgement order, with no forum to address those
22 questions.

23 In contrast, the Department's proposal to have utilities file preliminary avoided costs at
24 the same time as their IRP filing encourages QF participation in the IRP process, which

¹⁵ Staff Pre-hearing Memorandum, Docket UM 1610 Phase II, page 22 (September 2, 2015).

¹⁶ Staff Pre-hearing Memorandum, Docket UM 1610 Phase II, pages 21 (September 2, 2015)

1 should encourage discussions about the deficiency date and its effect on avoided costs, and
2 will inform the Commission's acknowledgement order. Discussing the deficiency date and
3 effects on avoided costs during the IRP process would have only small administrative costs
4 and potentially large benefits. Having these discussions in the IRP process would also
5 facilitate the subsequent contested case avoided cost docket.

6

7 **6. Do the market prices used during the Resource Sufficiency Period sufficiently**
8 **compensate for capacity?**

9 The Department's position on issue number six is that a forecast of forward wholesale power
10 prices is a reasonable estimate of avoided costs during the sufficiency period as long as the
11 company's past power purchasing behavior is consistent with the type of prices being forecast.
12 The Department examined the testimony by the three electric companies related to its position on
13 this issue and found no objections.

14 The Department takes no position on whether the cost of retrofitting existing plants with
15 air pollution controls has a role in setting avoided cost in the case of PacifiCorp.¹⁷ Whether
16 or not to do so would depend upon the particulars of the case, making it impractical to
17 resolve that proposal in this generic policy docket. The costs and issues should be argued in
18 an IRP or avoided cost docket for a single electric company. This issue is particularly
19 germane to an IRP/avoided cost docket as proposed by the Department in issue number five
20 above.

21 **7. What is the most appropriate methodology for calculating non-standard avoided cost**
22 **prices? Should the methodology be the same for all three electric utilities operating in**
23 **Oregon?**

¹⁷ Joint QF Parties/100, Higgins.

1 The Department's position is that the floor for non-standard avoided costs should be the
2 wholesale power price forecast used to set avoided costs in standard QF contracts; this floor
3 should be applied to all three investor-owned electric utilities operating in Oregon.
4 Commission Staff agrees with this recommendation.¹⁸

5

6 **9. How should third-party transmission costs to move QF output in a load pocket to load**
7 **be calculated and accounted for in the standard contract?**

8 The Department concurs with the proposal by Commission Staff to move issue number
9 nine to Phase III,¹⁹ and offers the following analysis to explain why the issue warrants
10 additional investigation.

11 In its testimony, PacifiCorp makes a series of arguments in the course of rejecting the
12 third-party transmission options proposed by the Department, the Community Renewable
13 Energy Association (CREA) and others. Some of these arguments are based on regulations
14 and procedures, while others are based on business reasons, such as allocation of risk or
15 administrative burden. For example, PacifiCorp argues that "under PURPA rules and
16 procedures, utilities have a mandatory obligation to purchase a QF's net output, as well as to
17 make firm transmission arrangements to deliver that QF power to its network load,"²⁰ that "it
18 is not the QF's option to select the transmission service for the utility to deliver the QF's

¹⁸ "Q. ... Does Staff agree with this [ODOE's] recommendation? A. Yes. As ODOE notes, utilities used to utilize decremental generating costs to determine standard avoided cost prices during sufficiency periods. In Order No. 05-584, the Commission decided that such prices did not sufficiently compensate QFs for avoided capacity and ordered utilities to value 'avoided costs when a utility is in a resource sufficient position at monthly on- and off peak forward market prices as of the utility's avoided cost filing.' Although that order applied to the calculation of standard avoided cost prices, the same reasoning supports the use of wholesale prices as a floor in the calculation of non-standard rates." Staff/700, Andrus/11-12.

¹⁹ Staff/700, Andrus/13, lines 12 – 16 ("Staff believes that all the parties need sufficient time to investigate PacifiCorp's proposed transmission cost allocation methodology and to evaluate the feasibility of other options proposed in this case. Staff recommends the Commission defer this issue to Phase III of this investigation for further review.")

²⁰ PAC/1600, Griswold/4.

1 generation to network load,”²¹ and that “[t]he Company and its customers should not bear the
2 risk of inadequate or less than firm transmission” to move QF resources to load.²² The
3 Department would like the opportunity to evaluate these arguments more fully than time has
4 allowed for in this docket.

5 As the Department has stated in its prior testimony in this docket, the Department agrees
6 with the Commission that a QF must pay the cost of transmission service when third-party
7 transmission is needed to move QF generation exceeding the minimum load out of a load
8 pocket.²³ The Department’s concerns center around the goal of ensuring that the cost a QF
9 pays for third-party transmission accurately reflects the actual transmission needs of the QF.
10 In order to ensure that transmission costs accurately reflect a QF’s needs, there must be
11 provisions in the standard contracting process that allow for: 1) the flexibility to meet
12 changing circumstances over the contract term, 2) options in the standard contract, or
13 addendum to the standard contract, to better fit the various situations of individual QFs, and
14 3) sufficient transparency to enable QFs to make informed choices.

15 **Definition of a load pocket**

16 The Department wishes to emphasize the need for a clear definition of the term “load
17 pocket.” In response to a data request, PacifiCorp produced a map²⁴ indicating that
18 essentially all areas of Oregon served by the Company are considered load pockets. The
19 Department does not agree with this interpretation of the term load pocket. As stated in the
20 Department’s Reply Testimony²⁵, load pockets in Oregon should be identified by the utility

²¹ PAC/1600, Griswold/8.

²² PAC/1300, Griswold/17.

²³ ODOE/1000, Broad/3; lines 13-16.

²⁴ CREA/501, Skeahan/1.

²⁵ ODOE/1000, Broad/7.

1 at the time of filing its avoided costs. The Department encourages the Commission to
2 consider a service area to be a load pocket only if third-party transmission is the sole means
3 utilized by the utility to serve its load in that geographic area.

4 **Flexibility to meet changing circumstances over the contract term**

5 The Department shares Staff's concern that the solution proposed by PacifiCorp is not a
6 good fit for the dynamic conditions PacifiCorp describes, with loads changing often enough
7 that lists and descriptions of geographical areas inside or outside a load pocket can become
8 obsolete within a year or two, and certainly over the course of a standard QF contract.²⁶

9 **Options to meet individual QFs' various needs**

10 The Department would like the opportunity to investigate more fully PacifiCorp's
11 arguments that transmission options other than long-term firm are either not allowable under
12 FERC regulations or present unacceptable risk to the Company and its ratepayers.²⁷
13 PacifiCorp's description of the situation in many, if not most, load pockets would imply that,
14 at least in the short term, its customers are at very low risk from inadequate transmission to
15 move excess QF load out of a load pocket. In rejecting CREA's suggestion that the company
16 could sell excess transmission out of a load pocket when the QF's generation is below load,
17 PacifiCorp explains that many load pockets are under legacy transmission agreements where
18 transmission was historically in one direction only, with "very limited parties, if any that
19 would have an interest to purchase transmission service on that path. In other words, no other
20 parties are in the transmission queue to purchase PTP on the same path out of a load

²⁶ Staff Pre-hearing Memorandum, Docket UM 1610 Phase II, pages 41-42 (September 2, 2015) ("If the conditions creating a load pocket are so dynamic that it is unreasonable to require PacifiCorp to describe them every two years, PacifiCorp's proposal to establish a transmission charge to move generation out of a currently-existing load pocket for a term of up to 20 years is remarkably unappealing.").

²⁷ PAC/1300, Griswold/17.

1 pocket.”²⁸ Given the lead time necessary to permit, finance, and install a new energy
2 resource, allowing QFs to choose transmission options other than long-term firm but
3 requiring the renewal of transmission services options on a periodic basis would give a utility
4 opportunity to protect its customers.

5 Additional time is also necessary for the parties to investigate PacifiCorp’s assertion that
6 FERC regulations do not permit contract provisions that would allow curtailment of QF
7 resources when excess QF generation exceeds transmission capacity.²⁹

8 **Transparency and information sharing**

9 PacifiCorp Transmission is the entity securing transmission services to move the QF’s
10 excess power out of the load pocket to the retail load, services for which the QF will pay the
11 cost. The Department recommends that the standard contract be amended to require greater
12 transparency about what PacifiCorp Transmission proposes to procure on its behalf and the
13 actual current costs of that service. In addition, as the Department has proposed in its
14 Response Testimony, the standard contract should provide for a true-up on an annual basis,
15 where the amount the QF paid for transmission would be compared to the actual cost of that
16 transmission, and any excess payments refunded to the QF.³⁰

17

²⁸ PAC/1300, Griswold/16.

²⁹ PAC/1600, Griswold/7-8.

³⁰ ODOE/1000, Broad/4.

1 **Interim solution: Addendum to Standard Contract**

2 In principle, the Department stands by its position that the practice of assigning costs of
3 transmission service through a separately-negotiated addendum to the standard contract is at
4 odds with the purpose of a standard contract, in that the transmission service costs and
5 methodology for determining those costs are negotiated between the utility and the QF, with
6 the QF having limited data access. Small QFs do not have the resources to get consistently
7 fair treatment in this type of negotiation, which is the reason the Commission adopted
8 standard contracts for the purchase of QF power.

9 Staff recommends that the Commission agree to PacifiCorp's proposal that "the costs and
10 benefits associated with the transmission should...be captured on an individual QF project
11 basis between the QF and Company as an addendum to the agreement."³¹ While the
12 Department does not support using an addendum as a permanent solution, the Department
13 support's Staff's recommendations in the interim while awaiting full consideration of the
14 afore-mentioned issues in Phase III. The Department would like to see an option in the
15 addendum for QFs to choose between paying a flat monthly amount for transmission and
16 receiving a reduced per-MWh payment, for the purposes of easing cash flow impacts on
17 seasonally variable resources like solar. Ideally, such an addendum would be revisited every
18 five years.

19 The Department continues to recommend that the Commission adopt changes to the
20 standard contract which result in clear choices for the QF with regards to transmission
21 service, ensure that utility ratepayers are protected from paying transmission costs which are

³¹ Staff Pre-hearing Memorandum, UM 1610 Phase II, Page 40 (September 2, 2015).

1 the responsibility of the QF, and make clear what those costs are over the term of the
2 contract.

3 **III. Conclusion**

4 The Department's recommendations in this docket are intended to balance Oregon's goal
5 of encouraging QF development with the protection of ratepayers. The Department
6 reiterates the continued importance of the standard contract option, with standard avoided
7 cost rates, in facilitating the development of small distributed generation, and recommend
8 specific adjustments to avoided cost prices based on QF resource type so that the price
9 paid to the QF more closely matches the value electric company customers receive from
10 the QF. The Department appreciates the opportunity to participate in this docket and
11 respectfully request that the Commission consider its proposals contained herein.

12 Dated this 13th day of October, 2015.

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Respectfully submitted,

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