BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1734

In the Matter of PACIFICORP, dba PACIFIC POWER, Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap	SIERRA CLUB'S OPENING BRIEF

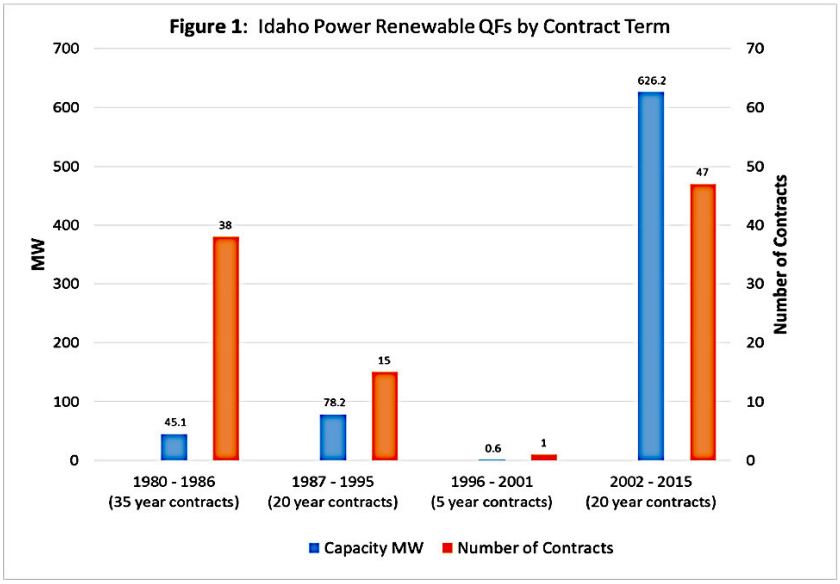
In accordance with the Revised Scheduling Order issued October 21, 2015 in the above-captioned docket before the Public Utility Commission of Oregon ("Commission"), Sierra Club hereby submits this opening brief opposing PacifiCorp's request to reduce the qualifying facility ("QF") contract term under the Public Utility Regulatory Policies Act ("PURPA").

In its January 5, 2016 Prehearing Brief, Sierra Club addressed many of the substantive issues on the merits of PacifiCorp's proposal to reduce contract terms for QF's from a 20 year term with a 15 year fixed price to only a three year term. Sierra Club also addressed legal issues demonstrating that such a dramatic change would run afoul of PURPA's must-purchase obligation. Sierra Club does not repeat those arguments in full here, and Sierra Club encourages the Commission to review Sierra Club's Prehearing Brief, which provides a comprehensive outline of Sierra Club's position in this proceeding. That position has not changed following the January 21, 2016 evidentiary hearings where PacifiCorp's witness, Mr. Bruce Griswold, was the sole witness to undergo cross-examination. To the contrary, as discussed in more detail below, Mr. Griswold's testimony under cross-examination wholly failed to contradict Sierra Club's and

other parties' assertions that customers would likely be harmed if the Commission adopted PacifiCorp's proposal to shorten the QF contract term to only three years.[1]

I. SHORTENING QF CONTRACT TERMS TO ONLY THREE YEARS WILL EFFECTIVELY ELIMINATE RENEWABLE QF DEVELOPMENT IN OREGON.

Notwithstanding Mr. Griswold's claims that he is not aware of any desire by PacifiCorp to eliminate the must-purchase obligation for QFs in its service territory,[2] the practical effect of PacifiCorp's proposal to reduce contract terms to 3-years, if approved, would almost certainly prevent further QF development in PacifiCorp's Oregon service territory. Sierra Club provided testimony on this topic, citing to other jurisdictions where contracts for QFs were severely shortened.[3] In particular, Figure 1 at page 16 of Mr. McGuire's Direct Testimony for Sierra Club illustrated the dramatic decrease in both installed capacity and contracts during the period from 1996-2001 when Idaho implemented a 5-year contract term.



[1] Sierra Club does not take a position on PacifiCorp's proposal to lower the standard contract eligibility cap.
[2] Hrg. Tr. at p.24, line 24 and p.43, line 3 (Griswold).
[3] Sierra Club/100, McGuire/15-17.

PacifiCorp's own service territory provides a similar example. The fixed price contract term for QFs in Washington is currently 5 years.[4] PacifiCorp has only three currently operating QF projects in Washington totaling less than 6 MW.[5] And of those, two are hydro projects that are operating on 25-year contracts.[6] This leaves a single QF, a dairy farm digester, with a contract of 5 years.[7] This dearth of QF projects in Washington contrasts sharply with the "stark growth in fixed-price PPA requests in Oregon" described by Mr. Griswold in his direct testimony.[8]

The difference in development rates of QF projects in jurisdictions that provide reasonable contract term lengths and those that provide contract term lengths of 5 years is substantial. Whether by intent or ignorance, the result of PacifiCorp's request in this case, if approved, would be to make it practically impossible to finance additional renewable QF projects in Oregon. Such a decision would not be in the public interest because it would deprive ratepayers of a competitively priced resource.[9]

II. OREGON'S CURRENT AVOIDED COST METHODOLOGY IS WORKING, AND CUSTOMERS WILL CONTINUE TO BENEFIT FROM COMPETITIVELY PRICED QF PROJECTS.

Maintaining the existing contract terms for QFs under PURPA will continue to protect ratepayers. Prices for QFs right now are extraordinarily low compared to both historic QF pricing and PacifiCorp's costs for its own generation. During the hearings, Mr. Griswold confirmed Mr. McGuire's testimony that current indicative pricing for solar QFs is

[4] Hr'g. Tr. at 13, line 2 (Griswold).
[5] Hr'g. Tr. at 13, lines 14-16 (Griswold).
[6] Hr'g. Tr. at 13, line 23 (Griswold).
[7] Hr'g. Tr. at 14, lines 3-4 (Griswold).
[8] PAC/100, Griswold/3.
[9] Furthermore, as discussed in Sierra Club's Prehearing Brief, a 3-year contract term would violate PURPA because such contracts would not compensate QFs for capacity contributions to PacifiCorp's system and would not provide the QF an opportunity to sell energy and capacity based upon the avoided costs calculated at the time the obligation is incurred (18 C.F.R. § 292.304(d)).

approximately $45/MWh.[10] If solar projects are in fact able to successfully develop at that price, a point which is not necessarily a foregone conclusion,[11] then ratepayers will benefit by securing a long-term contract at very favorable rates.

PacifiCorp laments the long-term exposure to fixed-price contracts that QFs create,[12] but Sierra Club's testimony pointed out that long-term commitments are common throughout the industry, and in fact the Company frequently exposes its customers to long term risk by developing its own capital intensive generating projects.[13] Utility-owned generation includes a substantial capital investment that results in fixed costs that are recovered from ratepayers regardless of whether the generating unit remains the lowest cost resource years into the future. When it deploys its own capital, the decision of whether to require ratepayers to cover those long-term costs is judged based on the best available price forecasts available at the time the unit is built. A QF faces a similar analysis because the avoided costs methodology used to determine the fixed price contracts looks forward at price forecasts to determine both the energy and capacity components of the indicative pricing.

PacifiCorp's attempt to distinguish the long-term cost risks associated with utility-owned generation was unpersuasive because it failed to address all of the long-term cost risks that ratepayers assume for utility-owned projects. In his reply testimony, Mr. Griswold provided the following illustrative example of how the utility could save on marginal costs if it backed down its own generation:

> For example, if the marginal cost of a Company gas plant is $40 per MWh, but another alternative, such as a short-term firm market purchase, costs only $30 perMWh, the Company would dispatch

[10] Hr'g. Tr. at 35, line 18 – 36, line 5 (Griswold) (referencing Sierra Club/100, McGuire/8-9).
[11] *See*, Sierra Club/100, McGuire/8.
[12] *See*, *e.g.*, PAC/100, Griswold/5.
[13] Sierra Club/100, McGuire/24-25.

> down the gas plant and buy from the market, saving customers $10 per MWh.[14]

Sierra Club does not dispute that the Company could save marginal costs by backing down uncompetitive resources if their marginal costs, largely driven by fuel prices, were uncompetitive. However, Mr. Griswold's example failed to account for the fixed prices that ratepayers continue to pay for the utility-owned resource, even if it is backed down. Mr. Griswold conceded during the hearing that in his example, ratepayers would still have to pay for fixed costs.[15] Those costs include the "steel-in-the-ground" costs of the generating unit, as well as any long-term contract obligations such as the 15-year take-or-pay coal supply agreement that was recently at issue in Oregon Docket UM 1712.[16] For Mr. Griswold's example, this means that the ability to avoid the $40/MWh costs of a hypothetical gas plant would not include the all-in costs that account for both the marginal and fixed costs.

In practice, the all-in costs for utility-owned generation are likely higher – much higher – than the current indicative pricing for solar QFs in Oregon. While Mr. Griswold could not speculate on the all-in costs of a recent utility-built resource such as the Lakeside gas plant, he did agree that the all-in costs of such a plant are likely higher than the $45/MWh all-in costs for a solar QF. If we extrapolate Mr. Griswold's example of the hypothetical gas plant in his reply testimony, the ability to save $10/MWh on such a plant would be unlikely to outweigh the value of the currently low avoided cost prices. Assume, for the sake of argument, that the all-in costs for the hypothetical gas plant are $75/MWh, with $40/MWh attributed to marginal costs and the remaining $35/MWh attributed to fixed costs. The ability to save $10/MWh by backing down that plant and replacing it with a $30/MWh marginal cost resource would still mean that

[14] PAC/200, Griswold/14.
[15] Hr'g. Tr. at 34, line 23.
[16] *See*, Order 15-166 at 12.

ratepayers were effectively paying for $65/MWh power because they would have to pay for the replacement power ($30/MWh) as well as the fixed costs of the utility-owned generation ($35/MWh). Compared to the current indicative pricing of $45/MWh for a solar QF, the gas plant, even if it is backed down, is still not competitive.

The point of this example is not to provide a specific least-cost evaluation comparing a QF to a hypothetical gas plant. Rather, this example demonstrates that ratepayers are exposed to long-term cost risk in various forms in utility planning and management. In the context of utility-owned generation, that risk is managed by a prudence review that relies on the best available information from forward-looking price forecasts. In the context of a QF, that risk is managed through application of the avoided cost methodology, which similarly relies on the best information from forward-looking forecasts available at the time the resource is developed to determine the appropriate costs. While the two processes are not identical, they have similar risks and benefits from the standpoint of the ratepayers. Therefore, even if QFs maintain 15-year fixed price contracts, ratepayers will remain indifferent so long as the Commission's avoided cost methodology is working properly.

Sierra Club asserts that the avoided cost methodology is working and can continue to be refined over time. To the extent PacifiCorp is concerned that a flood of new QF projects will overwhelm its system, the proper place to address those concerns is by ensuring that the avoided cost methodology is sound. The Commission should not, as PacifiCorp suggests, blow up the whole system by effectively eliminating the ability of renewable QFs to obtain financing and develop projects within the state of Oregon.

III. CONCLUSION

For the reasons set forth above and in Sierra Club's Prehearing Brief, Sierra Club respectfully requests that the Commission reject PacifiCorp's proposal to shorten the contract term for QF facilities under PURPA.

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Respectfully submitted,

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