

**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
REPLY 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 reply brief opposing PacifiCorp’s request to reduce the qualifying facility (“QF”) contract term under the Public Utility Regulatory Policies Act (“PURPA”).

Reducing contract terms to three-years would effectively eliminate renewable QF development in Oregon because projects would be unable to obtain financing under a three-year contract term. Sierra Club and other parties reiterated this point throughout the proceeding.¹ Nothing in PacifiCorp’s testimony, briefing or evidentiary hearings effectively disputed this fact. To the contrary, when asked whether he had any evidence that the proposed three-year contract term would provide an opportunity for QFs to obtain financing, Mr. Griswold responded, “the simple answer is no...we’ve not...involved ourselves with project financing.”²

Having no evidence of its own to rely on for this point, PacifiCorp’s opening brief attempted to fill this omission by grasping for the testimony of other parties. PacifiCorp tried to

¹ See, e.g., Sierra Club/100, McGuire/13; Staff/100, Andrus 14-15; Coalition/100, Lowe/13; CREA/100, Skeahan/6; ODOE/200, Broad and Carver/3.

² Hr’g Tr. at 12:16-12:22.

mask this deficiency by citing to places in Mr. Griswold's testimony where he in turn cites, or rather broadly interprets, the testimony of other parties.³ However, contrary to PacifiCorp's assertion, the cited testimony does not "demonstrate that developers can obtain financing" for three-year contract terms. The specific testimony that PacifiCorp cited in the transcript is as follows:

Q. Mr. Griswold, are you familiar with any evidence -- testimony presented in this proceeding that indicates that financing is available for QF projects for consecutive three-year terms?

A. Yes. One of the parties in the case talked about being able -- the commercial financing of sequential three-year terms. They did point out that it was not impossible to get those kind of arrangements, and they also pointed out they would be more expensive, but he did point out that they were available in the marketplace.⁴

Although the testimony lacks any citation to testimony or even reference to the name of "one of the parties," it appears to be a reference to the testimony filed by the Oregon Department of Energy ("ODOE"). If indeed Mr. Griswold was referencing ODOE, his interpretation of their position is odd. ODOE's position on the issue of project financing under a three-year contract term is clear:

As outlined by witness John Hobbs in the Department's opening testimony, PacifiCorp's proposed reduction in contract length would introduce several repricing events into the term of a loan for a QF project, raising the price risk **beyond the tolerance of most commercial lenders**.⁵

Mr. Hobbs further elaborated this point in his opening testimony on behalf of ODOE:

There is no assurance a mutually satisfactory agreement on a non-standard contract can be reached with only a single consumer in

³ PacifiCorp Opening Brief at 21 ("The record in this case demonstrates that developers can obtain financing even if the contract term is three years")(citing PAC/200, Griswold/8-9; Tr. 76:1-77:1 (Griswold)).

⁴ Hr'g Tr. at 76:1-76:10.

⁵ ODOE/200, Broad and Carver/3 (emphasis added).

the market, therefore **most lenders would not put capital at risk** for the benefit of a QF under the proposed standard contract term reduction without having the terms of the subsequent non-standard contract already agreed upon.⁶

Far from supporting PacifiCorp's assertion that the record demonstrates financing would still be available under a three-year term, the testimony from ODOE, as well as several other parties, supports the direct contrary position that in fact a three-year contract term would essentially eliminate financing for QF projects in Oregon.

Whatever policy positions or legal arguments PacifiCorp puts forward to support its request here and in other states across the region, the fact remains that the practical effect of PacifiCorp's request to reduce QF contract terms to three years will stop the development of QFs. PacifiCorp devoted the bulk of its opening brief to pushing creative legal theories attempting to support its argument that the Commission can, in fact, choose to take action that would halt essentially all future QF development in Oregon without running afoul of PURPA. However, even if those legal theories hold up, which they do not, PacifiCorp's recommendation that the Commission attempt to exploit perceived loopholes in PURPA is contrary to the intent of the law.

The Supreme Court in F.E.R.C. v. Mississippi aptly summarized the intent of PURPA's must purchase obligation:

Section 210 [of PURPA] seeks to **encourage the development** of cogeneration and small power production facilities. Congress believed that increased use of these sources of energy would reduce the demand for traditional fossil fuels. But it also felt that two problems impeded the development of nontraditional generating facilities: (1) **traditional electricity utilities were reluctant to purchase power from,** and to sell power to, the nontraditional facilities, and (2) the regulation of these alternative

⁶ ODOE/100, Hobbs/3 (emphasis added).

energy sources by state and federal utility authorities **imposed financial burdens upon the nontraditional facilities and thus discouraged their development.**

456 U.S. 742, 750-51, (1982)(emphasis added)((internal citations omitted). The Supreme Court went on to explain that the intent of Congress in enacting PURPA was to overcome those perceived problems.

Rather than adhering to this overarching goal of PURPA, PacifiCorp is engaged in precisely the behavior that the Supreme Court identified as problematic. Specifically, PacifiCorp is reluctant to purchase power from QFs, and therefore PacifiCorp has asked the Commission to impose financial burdens on QFs in a manner that is certain to discourage their development. The Commission should decline PacifiCorp's request to undermine the goals of PURPA and should reject PacifiCorp's request to reduce QF contract terms.

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Respectfully submitted,

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