BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1734

In the Matter of PACIFICORP, dba PACIFIC POWER's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap.	)	RENEWABLE ENERGY COALITION OPENING BRIEF

I. INTRODUCTION

Pursuant to the Administrative Law Judge's October 21, 2015 Ruling, the Renewable Energy Coalition (the "Coalition") submits this opening brief urging the Oregon Public Utility Commission (the "Commission" or "OPUC") to reject PacifiCorp's proposals to: 1) lower the size threshold for wind and solar qualifying facilities ("QF") to 100 kilowatts ("kW"); and 2) reduce the contract term for all QFs to three years. The Commission should instead increase the contract term to twenty years of **fixed** prices, maintain the current size thresholds, and ensure that **all** existing QFs that renew their contracts are paid for capacity during the resource sufficiency period. In addition, if the Commission is inclined to adopt any relief for PacifiCorp, then it should narrow the company's request and make only the bare minimum policy changes necessary.

This proceeding was allegedly started because of PacifiCorp's concerns regarding the costs and reliability of new solar QFs. The Coalition agrees that PacifiCorp is facing a challenge because it has entered into a large number of new solar QF contracts and has

a number of new contract requests.[1] PacifiCorp, however, has overestimated the number of these projects that are likely to come on line and the Commission should not view project requests or even signed contracts as a real indicator of the amount of projects that will actually be built.[2]

The large number of new solar projects is not the real issue. PacifiCorp is not in any way concerned about the size and number of new solar projects. While PacifiCorp is objecting to new solar resources, the Company is also supports doubling the Oregon renewable portfolio standard. PacifiCorp wants to build and own these projects, but was not prepared when solar became economic, even with the historically low avoided cost rates. The company may also be concerned that it has missed its chance at best Oregon solar and wind sites.

PacifiCorp's goal appears to be to eliminate the ability of its competitors (QFs) to sell the company power. PacifiCorp and its parent company Berkshire Hathaway are using all available tools to legislatively and administratively repeal the Public Utility Regulatory Policies Act ("PURPA") in Oregon, Idaho, Utah, Washington, Wyoming, and in Congress.[3] New renewable resources are just fine, as long as PacifiCorp owns them, instead of independent power producers, including QFs.

PacifiCorp also characterizes its efforts as protecting Oregon ratepayers from sophisticated out of state developers.[4] The vast majority of operating QFs are not large, international developers. Instead, they are small Oregon owned businesses, irrigation,

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1 Coalition/100, Lowe/6.

2 Id.; Obsidian and Cypress Creek/200, Brown/2-13; CREA/100, Skeahan/8-9; Hearing Transcript ("Tr.") at 51, lines 14-21 (Projects may not be built even if the developer contacts the company about, or even signs, a contract).

3 REC Exhibit/407; Tr. at 70, line 7 to 71, line 21.

4 PAC/100, Griswold/36.

water and special service districts, municipalities, and other local entities. The revenues obtained by Oregon QFs, unlike those of Berkshire Hathaway, are generally re-invested in and contribute to the local economy.

While the Coalition is opposed to granting any relief to PacifiCorp, if the Commission elects to reduce the options for QFs, then the Commission should carefully consider the alleged problems and adopt narrow, targeted, and proportionate relief. The Commission has other options that will protect ratepayers, but will not unnecessarily harm those QFs that the company has not even claimed are causing any problems.

One potential solution is, instead of reducing the contract terms or lowering the size threshold, the Commission could impose an annual megawatt ("MW") cap on new wind and solar QFs eligible for standard contracts. For example, the Commission could set a 50 MW cap on the amount of new wind and solar QFs eligible for standard rates in any calendar year. Alternatively, the Commission could impose a 50 MW cap on standard rate eligibility for new wind and solar projects that have the same corporate owner. Once these caps have been reached, then additional QFs or projects would need to negotiate their rates with the company (which effectively prevents them from being able to be constructed in Oregon).[5]

The Commission should also treat baseload and currently operating QFs differently from new and intermittent QFs. Existing QFs are already operating and are generally selling power to the interconnected utility.[6] Some of these projects have been

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[5] No caps should apply to existing QFs that renew their contracts. PacifiCorp assumes that these QFs will continue to operate, and they are already part of the company's existing resource mix.

[6] Coalition/100, Lowe/10; Tr. at 6, line 15 through 7, line 9.

operating for thirty years or more.[7] PacifiCorp has not presented evidence that existing or baseload QFs are causing or will cause any problems, and their contract terms or size thresholds should not be changed.[8]

Small existing QFs are providing capacity benefits to PacifiCorp during the sufficiency period because they almost always renew their contracts. Existing QFs are not compensated for these benefits that they provide to PacifiCorp in Oregon (while they are compensated for these benefits in Idaho). Therefore, existing QFs should be paid capacity payments when their contracts expire and not have their contract terms or size thresholds reduced.[9]

In the end, the Commission should carefully consider the actual impacts of different types of QFs, and make policy changes (if any) that are minimum necessary to protect ratepayers while still allowing economic QFs to operate.

II. ARGUMENT

1. The Commission Should Increase the Contract Term to 20-years of Fixed Prices

The Commission should revise is current contract term policy that allows a QF to select up to a twenty-year contract term with fifteen years of fixed prices, and allow QFs to select up to a twenty-year contract term with twenty years of fixed prices. This fixed contract term increase should be made because: 1) twenty years of fixed prices are required under Oregon's PURPA; 2) federal law provides QFs with the right to enter into a long-term contract and be paid capacity; and 3) new and existing QFs need long-term contracts to obtain financing and plan their operations.

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7 Coalition/100, Lowe/10.

8 Id. at Lowe/3-4, 12-13.

9 Id. at Lowe/4, 16-19; Coalition/300, Lowe/2.

A. Oregon Law Requires QFs to Select Twenty-Year Fixed Price Contracts

Soon after the federal PURPA was enacted, Oregon has passed its own mini-PURPA statute. The Oregon PURPA statute largely re-affirms the federal PURPA, but also provides specific implementation direction to the Commission and imposes requirements not contained the federal statute. Specifically, the Oregon PURPA requires the utilities to offer twenty-year fixed price contracts.[10]

Oregon law requires the utilities "to prepare, publish and file with the Public Utility Commission a schedule of avoided costs . . . over at least the next 20 years."[11] The "[p]rices" that are "contained in the schedules . . . shall be reviewed and approved by the commission."[12] Therefore, the Commission must review and approve avoided cost prices for at least twenty years.

These are not just illustrative prices for forecasting purposes, but the prices that a QF has the legal right to purchase power at. A utility must "offer to purchase energy or energy and capacity" and "the price for such a purchase shall not be less than the utility's avoided costs."[13] The Oregon PURPA makes this clear by specifically stating that a QF has is right to avoided cost rates "calculated at the time the legal obligation to purchase

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10 The issue of the Oregon PURPA statute requiring twenty-year contracts was thoroughly briefed in the pre-hearing briefs by the Coalition, Renewable Northwest ("RNW"), and (most comprehensively) the Community Renewable Energy Association ("CREA"). To spare the Commission from re-reading all these arguments, the Coalition incorporates by reference the legal arguments in the prehearing briefs by the Coalition, RNW, and CREA.

11 ORS § 758.525(1).

12 Id.

13 ORS § 758.525(2).

the energy or energy and capacity is incurred."[14] Oregon QFs have the right to 20-year contracts when they sign a contract or commit themselves to sell their power.

The plain reading of the statute is supported by the testimony of Representative William Bradbury, a chief sponsor of the Oregon PURPA. Representative Bradbury explained that Oregon would require utilities "to forecast their avoided cost over a 20 year period" and "to enter into contract with power producers based on those forecasted avoided costs."[15]

B. FERC Requires Long-Term Contracts

QFs also have the right under FERC rules and precedent to sell power under long-term contracts.[16] FERC has never explicitly stated what the minimum acceptable contract length is; however, FERC recognizes that long-term contracts are necessary to ensure that QFs can sell under forecasted (rather than adjusted) rates, obtain financing necessary for construction and continued operation, and are paid for capacity.[17] The evidence in this proceeding demonstrates that any contracts with less than fifteen years of fixed prices would violate FERC's policies and goals.

FERC's regulations provide a QF with the legal right to sell energy or capacity pursuant "a contract over a specified term" with rates that are calculated at the time the obligation is incurred.[18] FERC has explained that this "specified term" includes the right

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14 ORS § 758.525(2)(b).

15 Hearing on HB 2023, Oregon Senate Committee on the Environment, Statement of Representative William Bradbury (June 16, 1983).

16 Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980); Hydrodynamics Inc., 146 FERC ¶ 61,193 at PP. 33, 34 (2014); New York Gas and Elec. Corp., 71 FERC ¶ 61027, 14-15 (1995).

17 Id.

18 18 C.F.R. § 292.304(d)(2)(ii); New York State Electric & Gas Corp., 71 FERC ¶ 61027, 14-15 (1995).

"to obtain long-term avoided cost rates."[19] QFs are entitled to a fixed contract so that a utility cannot circumvent the requirement that a QF be paid for capacity.[20] The need for QFs to be paid capacity should be one guide for the Commission to determine how long of a contract term is "long" enough.

Current contract terms only allow QFs to be paid for a small portion of the capacity value they provide to the utilities, and short-term contracts would result in QFs never being paid for the capacity. PacifiCorp's current avoided cost rates include a deficiency period of 2024, which means that they do not include capacity payments associated with planned thermal or renewable resources until 2024. Any contract term shorter than this sufficiency period will mean that QFs will not be paid for any of these capacity costs.[21] Thus, under the current fifteen-year fixed price contracts, QFs are only paid for a few years of capacity payments. Three year or other short-term contracts would ensure QFs are not paid for the capacity that they will help defer. As explained by Staff witness Brittany Andrus:

> If the term of the contract is too short, the QF's ability to receive deficiency-period avoided cost prices is extremely limited. Three-year contracts, or even 10-year contracts in the current situation when new resources are not planned for that time period, would limit QFs to avoided cost prices that reflect the market only, and would not be long enough to pay any avoided costs based on the utility's next avoidable resource.[22]

This problem will exist even if PacifiCorp returns to having short or medium term sufficiency periods.[23] For example, assume that PacifiCorp is planning its next thermal resource acquisition in only a few years, or 2019. A QF that enters into a new three-year

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19 Hydrodynamics Inc., 146 FERC ¶ 61,193 at P. 33 (emphasis added).
20 Id.; Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980).
21 Coalition/100, Lowe/14-16; Coalition/300, Lowe/2.
22 Staff/100, Andrus/10.
23 Coalition/100, Lowe/14-15.

contract in 2016 will not be paid for capacity during the entire contract term. In 2019, PacifiCorp will have a new IRP, which will likely not plan on acquiring a new thermal resource for more than three years, and the company's 2019 avoided cost rates would not have any capacity payments. If the QF renews its contract and enters into a new thee-year contract in 2019, then the QF will again not be paid for capacity. The QF could continue renewing its contracts for the rest of its useful life and PacifiCorp could build a new thermal resource every few years, but the QF would **never** be paid for capacity.

C. FERC and the Commission Have Concluded that Contract Terms Should Allow Most QFs to Obtain Financing

The Commission's policies regarding contract terms have varied over the years, with the Commission adopting the current fifteen-year fixed price term in 2005.[24] The grounds for the Commission's decision was that its "fundamental objective 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."[25] Specifically, the Commission concluded "that the contract term length minimally necessary to ensure that most QF projects can be financed should be the maximum term for standard contracts."[26] In addition, when approving contract terms in the past, the Commission has relied upon factors related to whether the resource will operate as long as the contract term, and the resource's cost and physical characteristics support long-term contracts.[27]

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24 Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 19 (May 13, 2005).

25 Id.

26 Id.

27 Id. at 10.

FERC has also stated long term contracts are appropriate because QFs have a "need for certainty with regard to return on investment in new technologies".[28] In requiring long-term contracts, FERC recognized that long-term avoided cost rates would be inaccurate, but explained that this risk was less important than ensuring that QFs can obtain financing.[29] Therefore, the minimum contract term should be sufficient to allow both new and existing QFs an ability to obtain financing and continue to operate.

D. Oregon QFs Need Long-Term Contracts to Obtain Financing

Both new and existing QFs need long-term contract terms with fixed prices for at least fifteen years to obtain financing.[30] There is no evidence that most, or even more than a handful of QFs, will be able to obtain financing with three-year contract terms. In contrast, the evidence demonstrates that three, five, or even ten year contract terms will effectively end PURPA development and shut down existing QFs in Oregon. Fifteen year fixed prices are the bare minimum to allow QFs to be financed.

Current economic and regulatory policies warrant increasing rather than decreasing the contract term. Since the Commission originally adopted fifteen-year fixed price terms, avoided cost rates have significantly dropped, QFs are unable to have levelized price contracts, resource sufficiency periods have dramatically increased, and PacifiCorp has taken a more aggressive approach in terms of PURPA implementation. In

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28 Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980).

29 Id.; New York State Electric & Gas Corp., 71 FERC ¶ 61027, 14-15 (1995).

30 Coalition/100, Lowe/11-14; Coalition/200, Camarata-Pugh/4, 8-11; Staff/100, Andrus/9; Re Staff Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 19 (May 13, 2005) (The Commission's "fundamental objective 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" and "the contract term length minimally necessary to ensure that most QF projects can be financed should be the maximum term for standard contracts.).

contrast, while solar and wind prices have dropped, the costs associated with baseload projects have only increased.

PacifiCorp has not submitted **any** evidence that three-year contracts will allow most QFs to obtain financing. PacifiCorp witness Bruce Griswold is one of the most knowledgeable individuals at the company on PURPA matters.[31] At the evidentiary hearing, Mr. Griswold testified that the majority of QFs "usually seek a longer term contract", but that he did not "know the rationale for what their decisions are for selecting the term of the contract."[32] Mr. Griswold, however, agreed that one reason QFs could want longer-term contracts was "for financing purposes."[33]

Mr. Griswold testified multiple times that the Company has not submitted evidence that three-year contract terms will allow most QFs to obtain financing. Mr. Griswold was asked whether "the company provided **any evidence** regarding whether the three-year contract term would provide an opportunity for most qualifying facilities to obtain financing?"[34] Mr. Griswold's answer was: "Again, the simple answer is no. The longer answer is we've not—as I've stated before—involved ourselves with project financing."[35]

In contrast, Staff, the Oregon Department of Energy ("ODOE"), and the QF parties have submitted extensive and voluminous evidence that fifteen-year terms are the minimum necessary to allow QFs to obtain financing. As PacifiCorp has failed to meet

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31 Tr. at 6, lines 13-14.
32 Tr. at 8, lines 2-12.
33 Tr. at 8, line 13 through 9, line 5.
34 Tr. at 12, lines 16-20 (emphasis added).
35 Tr. at 12, lines 20-22, and at 20, lines 12-15 ("Q. And have you -- has PacifiCorp submitted evidence that a three-year contract term will ensure that most QF projects can be financed? A. We have not.")

its burden of proof that QFs can obtain financing under shorter contract terms, the Commission should at a minimum maintain fifteen year fixed price contracts.

ODOE witness John Hobbs worked for fifteen years in private sector commercial banking in Oregon. Mr. Hobbs explained that the contract term is critically important to obtain financing because lenders prefer the contract length to match "the life of the loan as it eliminates down-side pricing risk and makes underwriting the loan easier."[36] Reductions in the contract length add risk, increase costs, and will result in too much risk to obtain financing.[37]

PacifiCorp distorts ODOE's testimony claiming Mr. Hobbs' believes that three-year contract terms are appropriate and not unusual, and "that financing would not be impossible with a three-year term."[38] First, the standard is not whether financing would be "impossible," but whether the contract terms would allow most economic QFs to obtain financing. Second, Mr. Hobbs' testified to the exact opposite of PacifiCorp's characterization. Mr. Hobbs explained that three-year contract terms are not unusual in some markets, but "introduce too much price risk into an essentially closed market for the risk tolerance of most lenders."[39] In the context of a closed market for QF sales, "most lenders would not put capital at risk for the benefit of a QF under" three-year contract without having the terms of the subsequent contract agreed to.[40] Thus, most lenders will not lend to QFs with short-term contracts.

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36 ODOE/100, Hobbs/2.
37 Id.
38 PacifiCorp Pre-hearing Brief at 13.
39 ODOE/100, Hobbs/2.
40 Id. at Hobbs/3.

Ms. Andrus also agrees that PacifiCorp has not provided any evidence to contradict the Commission's prior conclusion that fifteen years is the minimum contract term necessary for most QFs to obtain financing. Ms. Andrus explained that QFs still have a need for reasonable financing, and there is nothing in "PacifiCorp's filing that would rebut the Commission's initial (and reinstated) policy regarding the QF contract term."[41]

QF parties themselves presented unrebutted evidence that they need long-term contracts to obtain financing. Coalition witness John Lowe and CREA witness Brian Skeahan are the heads of renewable energy project trade associations. Mr. Lowe worked on QF matters for PacifiCorp for over thirty years, and has managed the Coalition and provided consulting services to individual members related to both power purchases and interconnections for almost a decade.[42] Mr. Skeahan has over thirty years of industry experience in renewable energy development and policy, wholesale and retail rates, and various Pacific Northwest regional power matters.[43]

Mr. Skeahan explained that three-year contract terms "will make the financing of small projects impossible."[44] Mr. Skeahan described how lenders need a long-term revenue streams to make a project financially feasible and prudent financial practice provides for the term of the debt to be comparable to the useful life of the project."[45]

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41 Staff/100, Andrus/9.
42 Coalition/100, Lowe/1; Coalition/101, Lowe/1.
43 CREA/100, Skeahan/1.
44 Id. at Skeahan/6.
45 Id.

PacifiCorp's proposed three-year contract term "is primarily intended to preclude small QF projects from being financed and constructed."[46]

Mr. Lowe testified regarding the unique financing needs of existing QFs. Existing QFs "have financing and planning needs very similar to those of proposed projects."[47] Existing projects can expand their operations, and "may require major replacement and/or upgrading of their equipment, conveyance structures, and other facilities including interconnections."[48] Short-term contracts will make it difficult "to make necessary and mutually desirable project improvements". These difficulties for hydroelectric projects "would result in the loss of efficiency and water conservation improvement opportunities."[49]

Farmers Irrigation District and Deschutes Valley Water District are Coalition members who operate existing QFs. Jer Camarata was the District Manager at Farmers Irrigation District, and he testified regarding the impact of short-term contracts on their 4.8 MW hydroelectric facility in Hood River, Oregon.[50] Mr. Edson Pugh is the General Manager at Deschutes Valley Water District, and he testified regarding the impact of short-term contracts on their 4.3 MW hydro facility located in Jefferson County, Oregon.

Messrs. Camarata and Pugh testified that three-year contracts would force them to shut down their businesses, while fifteen-year fixed price contracts are minimally adequate to obtain financing.[51] Existing projects, especially irrigation districts, need to

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46 Id.
47 Coalition/100, Lowe/11.
48 Id. at Lowe/11.
49 Id. at Lowe/12.
50 Coalition/200, Camarata-Pugh/4.
51 Id. at Camarata-Pugh/8-9.

make almost continuous capital improvements that rely upon long-term debt financing.[52] For example, Farmers Irrigation District made over $40 million in capital improvement projects since the 1980s, and these investments would be impossible "without dependable, fair, long-term power-sales agreements."[53] Messrs. Camarata and Pugh explained that three "year contracts **would put us out of business** and jeopardize decades worth of conservation effort and threaten future reliability of critical water delivery systems to the public."[54] Messrs. Camarata and Pugh further explained that their projects need long-term financing because:

> Our existing projects are part of a large complex of integrated facilities that deliver critical irrigation and drinking water to citizens, businesses, and animals. In order to financially plan, engineer, build and operate these systems, including the hydro projects, it is necessary to incorporate long-term financing. Even with a 15-year power contract term, it is absolutely necessary to have long-term financing in place that exceeds such term. Short-term contracts of three years would make long-term planning nearly impossible, and very risky for District finances. Short-term contracts would also handicap our ability to provide and maintain safe infrastructure and reliable water supply to citizens, including but not limited to large and small agri-business. We have a hard enough time getting projects financed with the current contract criteria. A contract term of 3 years is not long enough for a project to pay for itself.[55]

The power sales revenues obtained by Farmers Irrigation District, Deschutes Valley Water District, and numerous other existing Oregon QFs are reinvested back into their local communities. These projects provide invaluable assistance to the local Oregon economy, lower irrigation rates, and promote ecologically, socially, and financially sustainable agriculture.

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52 Id. at Camarata-Pugh/3-4, 10.
53 Id. at Camarata-Pugh/3-4.
54 Id. at Camarata-Pugh/9 (emphasis added).
55 Id. at Camarata-Pugh/9-10.

E. Long-Term Contracts Provide Other Benefits that Allow QFs to Operate

The Commission should also maintain or expand long-term contracts because they are essential to project operations and development for reasons other than obtaining financing. Short-term contracts increase risks and costs, and provide PacifiCorp with another opportunity to raise obstacles to shut down existing projects. Short-term contracts also harm QFs "ability to make long-term plans that rely upon stable prices" necessary for all aspects of operations.[56] Long-term contracts are also necessary to allow QFs to remain economically viable because of the long resource sufficiency periods and low avoided cost rates.[57]

The contract negotiation process, even under standard contracts, is often time consuming and costly.[58] Existing QFs, especially small projects, do not have other options to sell their power, and their only choice is often to sell power to their utility or shut down. There is no need to subject QFs to these "unnecessary costs, risks, harm, and even the re-opening of interconnection agreements (which are also extremely difficult and costly to execute)."[59] In addition, requiring constant contract negotiations will harm ratepayers because it increases the utilities' costs, which will eventually be passed on to customers.[60]

Adding the requirement for constant negotiations also increases the likelihood of contract disputes and additional litigation before the Commission. In addition to price changes, there may be new interconnection or contract requirements that require

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56 Id. at Camarata-Pugh/11.
57 Coalition/100, Lowe/11-14; Staff/100, Andrus/9-10, 13.
58 Coalition/100, Lowe/13-14.
59 Coalition/200, Camarata-Pugh/11.
60 Coalition/100, Lowe/14.

additional negotiations. For example, PacifiCorp is now seeking to have **all** new QFs sign a jury trial waiver provision that has not been approved by the Commission. PacifiCorp raises other illegal hurdles, including requests for burdensome information, inappropriate adjustments to the calculation of net output, new transmission requirements, refusals to provide information or draft contracts, inaccurate information, and other obstacles. Negotiations or disputes about illegal contract terms, burdensome requests for information, price changes, new interconnection requirements, and other issues will increase costs and litigation if there are three-year contract terms.

One of the many ways in which short-term contracts harm a QF's ability to economically operate their systems is the impact on a project's ability to sell its renewable energy certificates.[61] QFs will be able to obtain higher or more stable prices for renewable energy certificate sales under long-term contracts because purchasers "often wish to enter into long-term contracts in excess of ten years."[62] Projects "may not be able to agree to sell the non-energy benefits under a long-term contract if we can only enter into a three-year contract to sell our electricity to the utility."[63]

In the end, requiring irrigation districts, waste management districts, municipalities, and other small QFs "to negotiate pricing and contracts every three years would be draconian, and a complete waste of taxpayer dollars."[64] There is no reason to require QFs be subjected to perpetual and wasteful negotiation that would ultimately harm the public, ratepayers, and will cause economic QFs to shut down or dramatically reduce their operations.

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61 Coalition/200, Camarata-Pugh/11-12.
62 Id.
63 Id.
64 Id. at Camarata-Pugh/11.

F. Historical Experience Demonstrates that Short-Term Contracts Will Have a Devastating Impact on QF Development

PacifiCorp argues that three-year contract terms are appropriate, and points to Idaho (which recently adopted two year contract terms) and Washington policy (which has five year fixed price contract terms for PacifiCorp).[65] Washington's and Idaho's experiences are excellent examples of how short-term contracts make it nearly impossible for the vast majority of QFs to develop and operate.

PacifiCorp's Washington operations tell a compelling story of the importance of contract terms. PacifiCorp's standard contract rates in Washington are currently limited to five years.[66] PacifiCorp's overall company wide operations have a small but important amount of QFs, including about 140 existing QFs representing about 1,730 MW of installed capacity.[67] After over thirty-five years since PURPA was passed, PacifiCorp is currently purchasing power from only **three** projects in Washington with "about 4 MWs, which represents less than 0.3% of all PacifiCorp's MWs of QF contracts."[68] In comparison, PacifiCorp's Washington operations represent about 8% of the company's load.[69] At least two of the three Washington QF projects were built when Washington QFs could obtain contract terms over twenty years.[70] Thus, there is only **one** operating Washington QF that was able to obtain financing and be constructed with five-year

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65 PacifiCorp Pre-hearing Brief at 15-16.

66 Pacific Power & Light Co., Schedule 37 (Washington). available at: https://www.pacificpower.net/content/dam/pacific_power/doc/About_Us/Rates_Regulation/Washington/Approved_Tariffs/Rate_Schedules/Cogeneration_and_Small_Power_Production.pdf

67 REC Exhibit/402, at 2-7.

68 Id.; Tr. at 13, lines 3-16.

69 available at: http://www.pacificorp.com/content/dam/pacificorp/doc/About_Us/Company_Overview/PC-FactSheet-Final_Web.pdf

70 Tr. at 13, lines 17-23; REC Exhibit/402 at 7.

contract terms.[71] Despite a similar service territory to Oregon, PacifiCorp currently has **no** new Washington QF contracts, or even interconnection or contract requests.[72] The key difference for PURPA development between PacifiCorp's Oregon and Washington service territories is the five-year and fifteen-year fixed price contract term. This starkly illustrates that very few QFs can be constructed with five-year contract terms.

Puget Sound Energy ("PSE") is another example with ten-year contract terms. PSE has a peak demand of 4,837 MW in 2012, but only seventeen QF contracts, nine of which are under 1 MW, none of which are larger than 5 megawatts, and a total QF nameplate capacity of around 25 MW.[73] Without analyzing the specific QF projects, PSE's experience shows that only a very small level of QF development is possible under ten-year contracts.

Idaho's historic experience is also another cautionary tale. In 1995, the Idaho Public Utilities Commission ("Idaho Commission") lowered contract terms to five years.[74] From 1996-2001, only **one** Idaho Power QF with a nameplate capacity of 0.2 MWs was able to become operational.[75]

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71 Tr. at 13, line 24 to 14, line 4.

72 Tr. at 14, line 21 to 15, line 14.

73 Puget Sound Energy 2013 Integrated Resource Plan, Docket Nos. Dockets UE-120767 & UG-120768, Appendix H at H-19 to H-21. available at: https://pse.com/aboutpse/EnergySupply/Documents/IRP_2013_AppH.pdf Puget Sound Energy 2013 Integrated Resource Plan, Docket Nos. Dockets UE-120767 & UG-120768, Appendix D at D-9 to D-11. available at: https://pse.com/aboutpse/EnergySupply/Documents/IRP_2013_AppD.pdf

74 In the Matter of the Investigation of the Continued Reasonableness of Current Size Limitations for PURPA QF Published Rate Eligibility (i.e., 1 MW) and Restrictions on Contract Length (i.e., 5 Years), IPUC Case No. GNR-E-02-1, Order No. 29029 at 7 (May 21, 2002).

75 Id.; In the Matter of Idaho Power Company Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval

PacifiCorp's own company-wide experience demonstrates that only a handful of QFs ever request three year contract terms.[76] These are primarily cogeneration facilities that can use their electrical output for internal operations, may already have been operating, and do not rely upon only power sales to obtain financing.[77]

In summary, the Commission's policy is that the contract term should be set so that the contract term should "ensure that **most** QF projects can be financed . . . ."[78] PacifiCorp has not presented evidence that anything more than a handful of projects will be able to be built or make capital upgrades with three-year contracts. Indeed, the evidence demonstrates that most QFs cannot be built with five or even ten-year contracts. Three-year (or other short-term) contracts will lead to even fewer new QFs and existing QFs unnecessarily shutting down their operations.

2. Existing QFs Should Be Paid for Capacity During the Sufficiency Period

Existing QFs should be paid for capacity when they renew their contracts.[79] This is consistent with how utilities plan their operations and the benefits that existing QFs provide to the utilities.[80] Small existing QFs almost always enter into new contracts when their current contracts expire, and they should be provided avoided costs prices that include capacity payments. Without existing QFs renewing their contracts, PacifiCorp would need to acquire new, more expensive capacity resources sooner. As existing QFs

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of Solar Integration Charge, and for Change in Resource Sufficiency Determination, Docket No. UM 1725, Coalition Exhibit/300.

76 REC Exhibit/402, at 2-7; Tr. at 12, lines 9-13.

77 Staff/100, Andrus/16-17.

78 Re Staff Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 19 (May 13, 2005).

79 Coalition/100, Lowe/4, 16-19; Coalition/300, Lowe/2.

80 Id.

provide capacity value by helping to defer the utilities' need to buy or build new capacity resources, their avoided cost rates should include both capacity and energy components.

Existing QFs are assumed to operate and continue selling power to the company in its integrated resource plan.[81] This represents sound resource planning as many QFs are long-term with little locational flexibility.[82] Currently operating QFs "have been and will continue to contribute to the utilities' capacity needs, which justifies paying existing QFs a capacity payment."[83] PacifiCorp previously agreed that existing QFs help defer the company's next capacity resource because the "capacity contribution of all signed QF contracts executed subsequent to the development of the IRP preferred portfolio reduce the deferrable capacity of the next avoidable resource . . . ."[84]

An illustrative example demonstrates how existing QFs are not fully paid for capacity. Assume that a hydroelectric QF has a sixty-year useful life, PacifiCorp has ten-year resource sufficiency periods during this time period, and QFs are entitled to fifteen year fixed price contracts. The QF has no other alternatives to sell its power, and enters into four fifteen-year contracts over its sixty-year useful life. PacifiCorp's ten-year resource sufficiency periods mean that the QF is only paid for capacity based on a thermal resource for five years of each contract. The QF could operate, and PacifiCorp could plan on the QF operating, for sixty years, but the QF would be paid forty years of market prices and only twenty years that include capacity.

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81 In its 2015 IRP, PacifiCorp is planning on the availability of 255 MWs of QFs to meet its system peak, and assumes that assumes that small QFs renew their contracts. PacifiCorp 2015 IRP at 62, 75.

82 Coalition/100, Lowe/12.

83 Id.

84 Id. at Lowe/16-17 citing Re Investigation into QF Contracting and Pricing, Oregon PUC Docket No. UM 1610, PacifiCorp Opening Testimony (PAC/100) at Dickman/15 (Feb. 4, 2013).

Paying renewing QFs capacity payments would treat QFs more comparably with utility-owned resources. While Oregon QFs are not provided the opportunity to obtain capacity payments for their full resource life, PacifiCorp is able to recover its capacity costs for the full useful life of its generating resources. Not providing existing QFs with full avoided cost pricing (including capacity payments) for their useful lives is inequitable as compared to the treatment afforded utility-owned resources.

The Idaho Public Utilities Commission ("IPUC") recognizes the value that renewing QFs provide, and ensures that they are paid capacity, regardless of the utility's resource "sufficiency" position. The IPUC explained:

> we find merit in the argument made by the Canal Companies that contract extensions and/or renewals present an exception to the capacity deficit rule that we adopt today. It is logical that, **if a QF project is being paid for capacity at the end of the contract term and the parties are seeking renewal/extension of the contract, the renewal/extension would include immediate payment of capacity. An existing QF's capacity would have already been included in the utility's load resource balance and could not be considered surplus power.** Therefore, we find it reasonable to allow QFs entering into contract extensions or renewals to be paid capacity for the full term of the extension or renewal.[85]

The IPUC recognizes that existing QFs should not be paid market based rates and their electricity is not "surplus power." Just like its own capacity resources, PacifiCorp includes these QFs in its resource plan and they should continue to be paid capacity.

The IPUC reaffirmed this policy this year.[86] The IPUC recently lowered the

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85 Re the Commission's Review of PURPA QF Contract Provisions, IPUC Case No. GNR-E-11-03, Order No. 32697 at 21-22 (emphasis added) (Dec. 18, 2012) clarified in Order No. 32871 (Aug. 9, 2013).

86 Re Idaho Power Company's Petition to Modify Terms and Conditions of PURPA Purchase Agreements, IPUC Case Nos. IPC-E-15-01, AVU-E-15-01, PAC-E-15-03, Order No. 33357 at 25-26 (Aug. 20, 2015).

contract term from twenty years to two years for wind and solar QFs, but maintained twenty-year contract terms for baseload QFs, including hydroelectric facilities. The IPUC recognized, however, that it would be inappropriate to have a short contract term for wind and solar QFs that does not allow these projects an opportunity to be paid for capacity. The IPUC understands that the combination of market based rate sufficiency period pricing and short contract terms would result in QFs never being paid for capacity. To avoid this result, the IPUC concluded that: 1) existing QFs that renew their contracts would continue to be paid capacity during the sufficiency period; and 2) new QFs that signed contracts would be paid capacity in most of the years of their renewal contracts. Specifically, the IPUC explained that:

> We recognize that a new two-year contract would be unlikely to reach a capacity deficiency date. Therefore, we find it reasonable for utilities to establish capacity deficiency at the time the initial IRP-based contract is signed. **As long as the QF renews its contract and continuously sells power to the utility, the QF is entitled to capacity** based on the capacity deficiency date established at the time of its initial contract. For example, if the QF comes on-line in 2017 and the utility is capacity deficient in 2020, the QF would be eligible for capacity payments in the second year of its second contract and thereafter if in continuous operation. **This adjustment recognizes that in ensuing contract periods, the QF is considered part of the utility's resource stack and will be contributing to reducing the utility's need for capacity. This mitigates the concern that short-term contracts will not contribute to the avoidance of utility capacity/generation.**[87]

Oregon regulatory policy is currently **less** favorable to existing renewable resources than the "green" state of Idaho. The failure to pay existing QFs for the capacity value they provide to PacifiCorp will mean that the same generation resource with the

[87] Id. (emphasis added).

same operating characteristics will be paid significantly lower avoided cost rates in Oregon than in Idaho.

3. The Commission Should Maintain 10 MW Size Thresholds For All QFs

The Commission should not lower the size threshold for wind and solar QFs. Even if some wind and solar QFs are more sophisticated than in the past, all small QFs face obstacles that warrant the protections afforded by standard contracts and rates. Many wind and solar QFs above 100 kW are community based projects that will be prevented from developing if the size threshold is lowered. PacifiCorp has also failed to explain why 100 kW is the appropriate size.

PacifiCorp agrees with the Coalition that baseload QFs should not have their contract terms reduced, and no party has submitted any evidence in support of reducing baseload QF contract terms. Thus, if the Commission lowers the size threshold for wind or solar QFs, then the Commission should not lower the size threshold for baseload QFs.

A. Standard Contracts Provide Important Protections for QFs

Standard contracts with fixed rates reduce, but do not eliminate, some the difficulties related to transaction costs, economies of scale, the lack of developer sophistication, and the inability to economically access alternative markets.[88] The standard contracting process is difficult enough, and the need to negotiate non-standard contracts is orders of magnitude more costly, uncertain, and subject to delay and abuse.[89]

The Commission has recognized that the 10 MW eligibility cap for standard contracts and rates is intended to reduce the challenges and remove some of the barriers

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88 Coalition/100, Lowe/7-8; Coalition/200, Camarata-Pugh/7-8.

89 See Coalition/100, Lowe/7-8; Coalition/200, Camarata-Pugh/7-8.

that smaller QFs face.[90] These challenges include the utilities' reluctance to buy power from non-utility owned generators, "transaction costs incurred in negotiating an agreement, and other market barriers such as asymmetric information and an unlevel playing field, all of which complicate the negotiation of non-standard QF contracts."[91] These barriers can result in making economic projects unable to be constructed or shutting down.[92]

Messrs. Camarata and Pugh explained the importance of not negotiating contracts for their hydroelectric projects:

> The primary reason is to avoid being subject to extremely costly negotiation of replacement power purchase agreements (that are not based upon known published prices), including highly variable prices and short contract terms. The Districts do not have the expertise nor resources to negotiate such prices and terms without significant third-party assistance and expense. Further, it has been experienced, and is expected that such agreements can not be reasonably met without significant time delays, cost, controversy, and risks associated with fluctuating prices and terms.[93]

Farmers Irrigation District, Deschutes Valley Water District, and the majority of PacifiCorp's Oregon QFs are not large, sophisticated energy developers. As explained by Messrs. Camarata and Pugh:

> Although the Districts may be relatively large in terms of acreage and end-users of water and other delivered resources, our primary business is not the development of energy producing projects. Our primary focus is the continued operation of the critical water systems needed to serve our communities. Maintaining the safe and reliable nature of our current hydroelectric projects is extremely important, but we are in the water delivery service sector.[94]

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90 In the Matter of the Commission Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 7 (Feb. 24, 2014).

91 Id.; Coalition/100, Lowe/6.

92 UM 1610, Order No. 14-058 at 7; Coalition/100, Lowe/6-8.

93 Coalition/200, Camarata-Pugh/7.

94 Id.

All small projects, and especially baseload QFs under 10 MWs, should be shielded from the unnecessary expense and difficulty associated with non-standard contract negotiations.

B. The 10 MW Size Threshold Is Critically Important for QFs to Be Constructed

It is extremely difficult for a large QF to negotiate a contract with PacifiCorp and become operational in Oregon.[95] It will become even more difficult (which is hard to imagine) if the Commission changes the manner in which avoided cost rates are set for QFs above the 10 MW size threshold. The Commission currently requires PacifiCorp to start with standard contract rates and make discrete adjustments, but PacifiCorp and Staff are recommending in UM 1610 that the company be allowed to use its complex, controversial, and "black-box" computer model to set avoided cost rates.[96] If the Commission adopts PacifiCorp and Staff's recommendations in both proceedings (lower size thresholds and use of a computer model), then a large number of new QFs would be required to negotiate their rates using an approach that is even more prone to dispute and uncertainty.

Given PacifiCorp's approach to negotiating standard contacts in Oregon, the standard contract size threshold is effectively a **cap** on the ability of the vast majority of QFs to be able to become operational. As explained by Mr. Lowe, "[t]he size threshold in Oregon is not a demarcation between negotiated contracts and standard contracts, but between a contract and **no** contract."[97]

PacifiCorp's existing Oregon QFs demonstrate the importance of size thresholds.

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95 Coalition/300, Lowe/3.
96 Id. at Lowe/3.
97 Id. at Lowe/3 (emphasis in original).

In fact, after thirty-five years of PURPA, there are only **two** operating Oregon QFs above 10 MWs, both of which are biomass projects whose electric generation is also used for other purposes.[98] It is unlikely that these facilities will be able to operate based only on their power sales, especially the extremely low current avoided cost rates.[99] QFs do not size their projects at the 9 or 10 MW level because of higher avoided cost rates, but because this is only way in which they can build their projects in Oregon.

The current 10 MW size thresholds have allowed a modest level QF development with around 130 MWs of QF nameplate capacity over the last decade.[100] This includes thirteen new QFs that have been constructed and selling power to PacifiCorp in Oregon since 2010 with less than 35 MWs of total capacity, and sixteen projects totaling around 95 MWs of capacity from 2007 to the end of 2009.[101] All of these projects "were able to be constructed during a period of much higher avoided cost rates, and before the Commission adopted a wind integration charge and reduced capacity payments for intermittent resources based on lower capacity contributions."[102]

Staff and PacifiCorp point out some wind and solar QFs have greater sophistication and have developed multiple projects.[103] The Coalition agrees that there are single owners for some wind projects that have been developed and solar projects that have entered into contracts; however, this does not mean that **all** these projects are large

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98 Id. at Lowe/3-4; REC Exhibit/402 at 2, 6 (Biomass 1's 32.25 MW project that became operational in 1987, and Roseburg Forest Product's 20 MW Dillard project that was already operational when it started selling power to PacifiCorp).

99 Coalition/300, Lowe/3-4.

100 Id.

101 Id. (the 95 MWs of nameplate capacity from 2007-2009 has much smaller actual net output since most of these projects were wind generation).

102 Id. at Lowe/4.

103 Staff/200, Andrus/4-7; PAC/100, Griswold/35-36.

or are by companies that have multiple projects. For example, while there have been no new PacifiCorp wind projects since 2009, three of the five wind developers referenced in Staff's testimony were single projects.[104] In addition, PacifiCorp has twelve solar QF contracts (which have not been built yet) and four wind projects in the about three to eight and half MW range.[105] An across the board reduction to 3 to 5 MWs, or 100 kW, will necessarily require some small, community based projects that have limited resources or sophistication to negotiate PURPA contracts. Based on history, this means that these small to mid sized projects will not be built.

C. If the Commission Makes Any Policy Changes, they Should Be Narrowly Tailored to Only Address the Alleged Problems and Not Harm Other QFs

While the Coalition opposes lowering the size threshold for any QFs, if the Commission is concerned about the increase in non-PacifiCorp owned projects, then it should adopt more limited relief.[106] PacifiCorp has failed to explain why 100 kW is the appropriate size.[107] There is no specific evidence regarding why the size threshold should be 100 kW instead of 3 MW or 5 MW or another number.[108] Mr. Lowe testified that "PacifiCorp has not demonstrated that a 200 kilowatt facility is similar to a 10 MW facility, and that very small facilities should not have the protection of standard contracts and rates."[109]

As explained in the introduction to this brief, a cap on the eligibility for standard contracts based on the annual amount of new wind and solar QFs, or a cap on new wind

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104 Staff/200, Andrus/4-7; REC Exhibit/402, 2-7.
105 REC Exhibit/402, 2-7.
106 E.g., Coalition/100, Lowe/5, 7.
107 Id. at Lowe/9.
108 Id.
109 Id.

and solar projects owned by a single developer would protect smaller, community based projects. Also, the Commission could require deposit payments for mid-sized wind and solar projects, which would reduce project speculation in which a developer signs contracts but is unlikely to develop them. Another alternative would be to change how close different projects can be located next to each other to require even greater distances.

Regardless, size thresholds should not be lowered for baseload QFs because PacifiCorp has only alleged problems related to solar QFs, and has not alleged that baseload QFs are causing any problems and the company has not even requested any rate and contract eligibility reduction for baseload QFs.[110] As Messrs. Lowe, Camarata and Pugh explained, at least baseload QFs need the protections offered by standard contracts and rates.

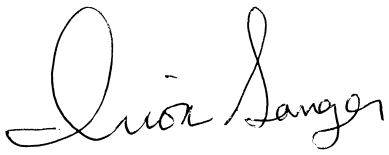
III. CONCLUSION

The Coalition recommends that the Commission reject PacifiCorp's proposals to lower the contract terms for all QFs and lower the size threshold for wind and solar QFs. If the Commission intends to lower the contract term or size threshold, then it should only apply to wind and solar QFs, and the Commission should consider other, more narrowly tailored solutions. Finally, the Commission should ensure that existing QFs are paid capacity in contract renewals.

[110] Id. at Lowe/4, 8-9.

Dated this 12th day of February 2016.

Respectfully submitted,



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