

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1734**

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

Pursuant to the Administrative Law Judge's October 21, 2015 Ruling, the Renewable Energy Coalition (the "Coalition") submits this prehearing brief recommending that the Oregon Public Utility Commission (the "Commission" or "OPUC") 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. Instead, the Coalition recommends that the Commission 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. Given that the schedule includes two additional rounds of briefing, this prehearing brief is limited to summarizing the Coalition's positions on key legal and factual issues.

If the Commission is inclined to adopt any part of PacifiCorp's recommendations, then it should adopt narrow, targeted, and proportionate relief that limits any potential

harm to QFs and ratepayers. The Commission should consider other less draconian options, and should not harm QFs that are not even allegedly causing any problems.

Baseload and currently operating should also be treated differently. Baseload QFs selling power should not have their contract terms or size thresholds reduced because PacifiCorp has not presented any evidence that baseload QFs are or will cause any problems.<sup>1</sup> In addition, all existing small QFs regardless of technology should be paid capacity payments when their contracts expire because they almost always renew their contracts.<sup>2</sup> QFs are currently providing capacity benefits to the utilities during the sufficiency period that they are not compensated for.<sup>3</sup>

## II. ARGUMENT

### 1. Oregon Law Requires 20 Years of Fixed Prices Calculated at the Time of Contract Formation

Oregon law requires utilities to offer twenty-year fixed price contracts. Specifically, utilities are required “to prepare, publish and file with the Public Utility Commission” their forecast avoided cost rates “over at least the next 20 years.”<sup>4</sup> These prices “shall be reviewed and approved by the commission.”<sup>5</sup> Oregon law similarly allows a QF to have their avoided cost rates “calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred.”<sup>6</sup> This means that Oregon QFs have the right to 20-year contracts with published avoided cost rates set when they sign a contract or commit themselves to sell their power.

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<sup>1</sup> Coalition/100, Lowe/3-4, 12-13.

<sup>2</sup> Id. at Lowe/4, 16-19; Coalition/300, Lowe/2.

<sup>3</sup> Coalition/100, Lowe/17.

<sup>4</sup> ORS § 758.525(1).

<sup>5</sup> Id.

<sup>6</sup> ORS § 758.525(2)(a).

Oregon law requiring 20-year fixed price contract terms was intentionally broader than the federal PURPA. When passing Oregon's PURPA, Representative William Bradbury explained that it included requirements that do not exist under the federal PURPA. Specifically:

the bill requires that the federal law does not require is that utilities must forecast their avoided cost over a 20 year period. They have to be willing to enter into contract with power producers based on those forecasted avoided costs.<sup>7</sup>

Therefore, Oregon QFs have a statutory right to twenty-year prices based on a utility's avoided cost rates calculated at the time the QF enters into a contract or another legally enforceable obligation.

## **2. Short-Term Contracts Violate FERC Precedent**

FERC rules and policies provide QFs the right to sell power under either short or long-term contracts.<sup>8</sup> 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 be paid for capacity.<sup>9</sup>

FERC's rules specifically allow a QF to sell power and be paid for both energy and capacity.<sup>10</sup> Unless a utility has no need for capacity over the long-term, avoided cost rates must include capacity payments.<sup>11</sup> PacifiCorp's current avoided cost rates include a sufficiency period that is more than three years, which means that any contract terms

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<sup>7</sup> Hearing on HB 2023, Oregon Senate Committee on the Environment, Statement of Representative William Bradbury (June 16, 1983).

<sup>8</sup> Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980); Hydrodynamics Inc., 146 FERC ¶ 61,193 at PP. 33, 34 (2014).

<sup>9</sup> Id.

<sup>10</sup> 18 C.F.R. § 292.304(d)(2)(ii).

<sup>11</sup> Hydrodynamics Inc., 146 FERC ¶ 61,193 at P. 35; Order No. 69, 45 Fed. Reg. 12,214, 12,224; Virginia Electric and Power Co., 151 FERC ¶ 61,038, P. 24 (2015); Cedar Creek Wind, LLC, 137 FERC ¶ 61,006, P 32 (2011); New York State Electric & Gas Corp., 71 FERC ¶ 61,027, 61,115-61,116 (1995).

shorter than the sufficiency period will prevent Oregon QFs from ever being paid for the capacity costs associated with planned capital investments.<sup>12</sup> As PacifiCorp's sufficiency periods grow, QFs may need twenty years of fixed prices just to be paid for capacity.

### **3. The Commission Should Retain Long-Term Contracts**

Long-term contracts are essential for both new and existing QFs. Most QFs request contract terms with fixed prices for at least fifteen years because they are needed to ensure that they can meet financing requirements, make longer term plans, and operate during the resource sufficiency period when avoided costs only include market-based prices.<sup>13</sup> Long-term contracts are even more critical in the current environment with long resource sufficiency periods and low avoided cost rates.<sup>14</sup> Existing QFs also can need long-term contracts because of expensive and complex equipment upgrades.<sup>15</sup> Twenty year contracts are also more consistent with the twenty year integrated resource planning ("IRP") horizon, and would allow comparable treatment between QFs and utility resources, which are included in rates for their economic life.<sup>16</sup>

If the Commission reduces the contract terms, then it should only do so for solar and maybe wind QFs.<sup>17</sup> In Idaho, PacifiCorp recently requested that the contract terms for all QFs be reduced to three years. This proposal was rejected by the Idaho Public

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<sup>12</sup> Coalition/100, Lowe/14-16; Coalition/300, Lowe/2.

<sup>13</sup> 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.").

<sup>14</sup> Coalition/100, Lowe/11-14; Staff/100, Andrus/9-10, 13.

<sup>15</sup> Coalition/100, Lowe/11-14; Coalition/200, Camarata-Pugh/4, 8-10.

<sup>16</sup> Staff/100, Andrus/16; Staff/200, Andrus/1-2; Coalition/100, Lowe/17.

<sup>17</sup> Coalition/100, Lowe/10.

Utilities Commission, which only reduced the contract term for QFs above the size threshold (wind and solar QFs above 100 kW and other QFs above 10 MWs).<sup>18</sup>

#### **4. The Size Thresholds for Wind and Solar QFs Should Not Be Lowered to 100 kW**

PacifiCorp has failed to present evidence to change the Commission's order recently reaffirming that all QFs 10 MWs and lower should be eligible for standard contracts and rates. Even if circumstances have changed, PacifiCorp has not demonstrated that other forms of relief would not better address the company's alleged problems.

Standard contracts with fixed rates mitigates some the difficulties related to transaction costs, economies of scale, the lack of developer sophistication, and the inability to economically access alternative markets.<sup>19</sup> The need to negotiate non-standard contracts can significantly increase costs, create uncertainty, and cause delays.<sup>20</sup> Except for the possibility that some solar QFs have greater sophistication, PacifiCorp has not established that wind and solar QFs below 10 MWs do not need these protections.

Most importantly, standard contracts reduce the utility's ability to insist upon unreasonable contract terms or rates, which is demonstrated by the fact that it is nearly impossible for QFs larger than 10 MWs to be completed in PacifiCorp's Oregon service territory.<sup>21</sup> Unless the Commission changes the non-standard contract process, then the

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<sup>18</sup> 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 3-4, 32 (Aug. 20, 2015) (PacifiCorp's contract terms reduced for only IRP based contracts, which are those below 100 kW for wind and solar and 10 aMW for all others).

<sup>19</sup> Coalition/100, Lowe/7-8; Coalition/200, Camarata-Pugh/7-8.

<sup>20</sup> Coalition/100, Lowe/7-8; Coalition/200, Camarata-Pugh/7-8.

<sup>21</sup> Coalition/300, Lowe/3-5.

size threshold will not be a cap on standard contracts, but a prohibition on new PURPA projects in PacifiCorp's service territory above the threshold.

Regardless, size thresholds should not be lowered for baseload QFs because PacifiCorp has not alleged that baseload QFs are causing any problems, nor has the company even requested any rate and contract eligibility reduction for baseload QFs.<sup>22</sup> In addition, since the issues raised in this proceeding only relate to solar projects, the Commission could adopt other forms of relief that may better address PacifiCorp's concerns. These could include only lowering the size threshold for solar projects, an annual cap on the amount of solar projects eligible for standard contract terms and rates, more stringent security deposits for large projects, or a change in how close different projects can be located next to each other.<sup>23</sup>

If the Commission intends to lower the size threshold for wind and solar, then there has not been adequate explanation regarding why 100 kW is the appropriate size.<sup>24</sup> There is no specific evidence regarding why the size threshold should be 100 kW instead of 3 MW or 5 MW or another number.<sup>25</sup> No party has clearly identified, explained or proven that a project developer's ability or sophistication of a project developer magically changes at 100 kW.

##### **5. The Commission Should Ensure that Existing QFs Are Paid for Capacity During the Sufficiency Period**

Existing QFs should be paid for capacity when they renew their contracts.<sup>26</sup> This is consistent with how utilities plan their operations and the benefits that existing QFs

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<sup>22</sup> Coalition/100, Lowe/4, 8-9.

<sup>23</sup> E.g., id. at Lowe/5, 7.

<sup>24</sup> Id. at Lowe/9.

<sup>25</sup> Id.

<sup>26</sup> Id. at Lowe/4, 16-19; Coalition/300, Lowe/2.

provide to the utilities.<sup>27</sup> Existing QFs entering into follow-on contracts should be provided avoided costs prices that include capacity payments.

Paying existing QFs that renew their contracts is especially important if the Commission lowers the contract terms. The Idaho Commission has shortened the contract term to two years for wind and solar QFs, which is similar to what PacifiCorp is requesting in this proceeding.<sup>28</sup> The Idaho Commission also ensured that new QFs that subsequently renew their contracts are generally paid capacity during the resource sufficiency period. This is not a new policy, as the Idaho Commission already required currently existing QFs to be paid for capacity during the full term of any contract renewals.<sup>29</sup> If the Commission does not ensure that existing QFs are paid for capacity, then renewing QFs will be treated significantly worse in Oregon than they are treated in Idaho.

### 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.

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<sup>27</sup>

Id.

<sup>28</sup>

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 1, 4, 21 (Aug. 20, 2015).

<sup>29</sup>

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

Dated this 5th day of January 2016.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large, looped initial "I".

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