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 REPLY BRIEF

I. INTRODUCTION

Pursuant to the Administrative Law Judge's October 21, 2015 Ruling, the Renewable Energy Coalition (the "Coalition") submits this reply brief regarding PacifiCorp's proposals to reduce contract terms for all qualifying facilities ("QF") and the standard contract eligibility cap for wind and solar QFs. PacifiCorp has failed to meet its burden of proof to shorten the contract term or lower the standard contract size threshold. Instead, the evidence demonstrates that contract terms should be increased to twenty years of fixed prices, size thresholds should not be changed, and existing QFs should be paid for the capacity they provide to PacifiCorp during all contract years. PacifiCorp's proposals have been thoroughly rebutted by the briefing and testimony of the Coalition, the Community Renewable Energy Association, Renewable Northwest, the Oregon Department of Energy, Obsidian Renewables, and the Oregon Public Utility Commission (the "Commission") Staff, and this reply brief is limited to only a few new issues raised in PacifiCorp's Opening Brief.

The Commission should recognize that PacifiCorp's apparent goal is stop the development of cost effective and beneficial non-utility owned generation rather than limit risk to ratepayers. PacifiCorp and other Oregon utilities take a vastly different approach to the risks associated with their own generation resources. For example, Portland General Electric Company ("PGE") recently declared the Carty Generation Station's engineering, procurement and construction contractor in default and terminated its contract. PGE may ask Oregon ratepayers to pick up hundreds of millions of dollars in cost overruns. PacifiCorp has taken a similar approach and has sought to place risks associated with its operations of power plants upon ratepayers in past.[1] In contrast, independent power producers, including QFs, absorb the risk of cost overruns, which provides significant protections to ratepayers.

If PacifiCorp were truly concerned about protecting ratepayers from risks, then it would have proposed more narrowly tailored relief that would not have the practical effect of administratively repealing the Public Utility Regulatory Policies Act ("PURPA"). The Coalition continues to urge the Commission to carefully consider the actual risks, costs and benefits of QF projects. If the Commission believes any changes should be made that increase hurdles or barriers to QFs, then any relief should be narrowly tailored to address the specific problems and the specific types of QFs that are allegedly causing those problems. The Coalition identified a number of alternatives in its Opening Brief, including: 1) lowering the size threshold or contract term for only solar QFs; 2) reducing the size threshold to 3 to 5 megawatts ("MW") for solar QFs; 3)

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[1] E.g., Industrial Customers of N.W. Utilities v Pub. Util. Comm'n, 196 Or.App. 46 n.4 (2004) (PacifiCorp recovered $160 million in excess power costs attributable to Oregon due to its Hunter outage).

security deposits; 4) increasing the distance projects must be from each other; 5) imposing an annual cap on standard contracts for new QFs; and 6) imposing an annual cap on standard contracts for new QFs owned by the same entity.

The Commission should not be limited to the potential options raised by the parties, as long as the result is lawful and supported by the evidentiary record. For example, PacifiCorp's main alleged concern with QFs is the risk that prices in contacts with non-utility owned resources may be "inflated."[2] If the Commission agrees that this is a problem, then a potential solution could be to lower the size threshold by which PacifiCorp and the QF negotiate the avoided cost rates. However, "price inflation risk" does not warrant requiring these QFs to negotiate all contract terms and conditions. Many of the hurdles and barriers that utilities raise in the negotiation process are related to burdensome, illegal and unreasonable contact terms, requirements or pre-conditions. In other words, there is no reason to require small and mid-sized wind and solar QFs to negotiate contract terms and conditions, if the alleged problem is "inflated prices". Again, the Commission should carefully consider the issues in this proceeding, and the changes (if any) should be narrowly tailored, proportionate, and limited to prevent unnecessary harm or unintended consequences.

II. ARGUMENT

1. Short Contract Terms Will Prevent QFs from Being Paid for Capacity

PacifiCorp admits that shortening contract terms to three years will result in QFs never being paid for capacity, unless the company plans to build a new thermal or

[2] PacifiCorp Opening Brief at 18, 21.

renewable resource in two years or less.[3] PacifiCorp asserts that this is consistent with the polices of the Commission and the Federal Energy Regulatory Commission ("FERC"), and that a QF does not need to be paid for capacity if the utility has no capacity needs.[4]

The logical result of PacifiCorp's position is that contact terms could be reduced to one year or even a month, and, since PacifiCorp does not need capacity for the year or month, then it would be appropriate not to pay the QF for capacity. PacifiCorp's position ignores FERC precedent that one point of having long-term contracts is to avoid this exact problem and ensure that QFs are paid for all the capacity resources that are avoided when a utility purchases their power.[5] In other words, the contract term cannot be arbitrarily shortened to a point that prevents QFs from being paid for capacity.

Both new and existing QFs will help defer new capacity resources and should be paid for the benefits they provide the company and its ratepayers. First, existing QFs are included in the company's integrated resource plan. The fact that PacifiCorp plans on existing QFs operating helps defer new resource acquisitions. Second, PacifiCorp is planning on new thermal and renewable resources over its twenty-year IRP planning horizon. As long as they have a long enough expected useful life, both new and existing QFs will help defer the company's need for new resources over the next two decades.

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3 Id. at 7-8.

4 Id.

5 Hydrodynamics Inc., 146 FERC ¶ 61,193 at P. 33 (2014); Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980).

2. Lowering the Standard Contract Size Threshold Will Effectively Prevent Most QFs Above the Threshold From Developing in Oregon

PacifiCorp argues that lowering the wind and solar standard contract size threshold to 100 kW will still allow QFs to develop. PacifiCorp's argument is based on the factually incorrect claim that it is a "fact that development can continue even with a lower cap" and that QF sizing themselves at 10 megawatts is evidence of improper disaggregation and not a barrier.[6]

The Company points to evidence regarding contracts and requests for pricing and power purchase agreements, and not actual constructed facilities.[7] The fact that some QFs above an applicable size threshold have asked for information about, or even been able to enter into, a contract does not support that development has occurred or even that it can occur.

Actual experience demonstrates the extreme difficulty of developing mid-sized to large projects over the standard contract size threshold. For example, from 1984 and 2006, approximately six currently operating QFs above three megawatts were able to be constructed and sell power to PacifiCorp in Oregon.[8] Since the Commission increased the size threshold to 10 MWs in 2005, there have been approximately sixteen projects above 3 MWs built and are currently operating in Oregon, but none above 10 MWs.[9] The

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6 PacifiCorp Opening Brief at 25-26.

7 Id. at 25 citing PAC/101, Griswold/2.

8 Exhibit REC/402 at 2-7. PacifiCorp's records are incomplete and difficult to interpret; however, the Coalition has identified Biomass One and five hydroelectric facilities between 4 and 6 MWs (Falls Creek, Deschutes Valley Water District (Opal Springs), Farmers Irrigation (Copper Dam Plant), Middlefork Irrigation District, and Central Oregon Irrigation District (Siphon)).

9 Exhibit REC/402 at 2-7. This includes a mix of wind, hydro, biomass, CHP, and methane QFs (Oregon Environmental Industries, Evergreen BioPower, Finley Bioenergy (Finley Buttes), Sand Ranch Windfarm, Butter Creek Power, Pacific Canyon Windfarm, Oregon Trail Windfarm, Wagon Trail, Ward Butte Windfarm,

majority of these are projects that cannot even remotely be considered inappropriate "disaggregation," including the biomass, methane, combined heat and power, and hydro projects, as well as some of the wind projects.[10] While it is impossible to determine, it is extremely unlike that most, or potentially even any, of these projects could have been constructed if they needed to negotiate non-standard contracts and prices with PacifiCorp.

PacifiCorp claims that it will not be able to insist upon unreasonable contract terms or rates because the Commission has adopted "comprehensive guidelines for negotiating QF contracts and the Commission's dispute resolution process."[11] PacifiCorp fails to note that it wants to gut these protections for large QFs by proposing to set their avoided cost rates using a computer model instead of the Commission's already established negotiation guidelines.[12] This highlights the importance of considering the impact of this proceeding in relation to other PURPA policies and dockets. PacifiCorp wants the Commission to make policy in isolation by simultaneously lowering the size threshold for certain QFs and raising a new obstacle to the already nearly impossible non-standard contract negotiation process.[13]

3. Oregon Law Requires 20 Year Fixed Price Contracts, and Not 20 Years of Illustrative Avoided Cost Data

PacifiCorp argues that Oregon law does not require fixed price terms of any length, and asserts that its "interpretation of ORS 758.525 is consistent with the parallel

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Threemile Canyon Wind I, Four Corners Windfarm, Four Mile Canyon Windfarm, Central Oregon Irrigation District (Juniper Ridge), Oregon State University, TMF Biofuels (Three Mile Digester), and Dorena Hydro).

10 Id.; Staff/200, Andrus/4-8.

11 PacifiCorp Opening Brief at 27-28.

12 Coalition/300, Lowe/3.

13 Id. at Lowe/2-5.

FERC regulations, which also do not provide a minimum fixed price contract term."[14] In addition to the reasons identified in earlier briefing, this argument is contradicted by the plain reading of both Oregon law and FERC's regulations.

FERC's regulations specifically apply to "electric utility system cost **data**" only, and have the purpose of "mak[ing] available data from which avoided costs **may** be derived."[15] This regulation is intended to require utilities to provide information that states can review to set the actual avoided cost rates.[16]

In contrast, the plain language of Oregon's statute and its legislative history explicitly require twenty-year contracts. Oregon law requires the utility to file and obtain "approval" of the "prices" include in "a schedule of its avoided costs" that is over at least a twenty year period.[17] The next section of the statute uses the same exact terms of "price" and "avoided costs" when obligating the utility to purchase power from a QF with a "price for such a purchase **shall** not be less than the utility's avoided costs."[18] PacifiCorp's interpretation is that the Commission's approval of the avoided cost "prices" in ORS § 758.525(1) is only for informational purposes, and has no legal impact upon the requirement regarding the "prices" that a QF is entitled to in ORS § 758.525(2). In other words, PacifiCorp's view is that legislature intended that the terms "prices" and "avoided costs" in ORS § 758.525(1) to have different meanings than the exact same terms in ORS § 758.525(2). The Commission should reject this strained interpretation.

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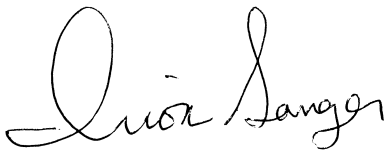
14 PacifiCorp Opening Brief at 10.
15 18 C.F.R. § 292.302, 292.302(b) (emphasis added).
16 18 C.F.R. § 292.302(e).
17 ORS § 758.525(1).
18 ORS § 758.525(2) (emphasis added).

III. CONCLUSION

For the reasons mentioned in the Coalition's testimony and briefing, the Commission should reject PacifiCorp's proposals, increase the fixed price contract term to twenty-years, and ensure that all existing QFs be paid capacity during all contract years.

Dated this 19th day of February 2016.

Respectfully submitted,



Irion Sanger
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Renewable Energy Coalition