

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1734**

In the Matter of	)	
	)	
PACIFICORP d/b/a PACIFIC POWER,	)	PREHEARING BRIEF OF
	)	RENEWABLE NORTHWEST
	)	
Application to Reduce the Qualifying Facility	)	
Contract Term and Lower the Qualifying	)	
Facility Standard Contract Eligibility Cap	)	
_____	)	

**I. INTRODUCTION**

Renewable Northwest submits this prehearing brief recommending that the Oregon Public Utility Commission (the “Commission”) reject PacifiCorp’s proposals to (1) reduce the fixed-price term of qualifying facility (“QF”) power purchase agreements (“PPAs”) from 15 years to three years, and (2) lower the eligibility cap for standard QF pricing and PPAs from 10 megawatts (“MW”) to 100 kilowatts (“kW”) for wind and solar QFs. Instead, we recommend that the Commission increase the contract term to twenty years of fixed prices, as required by Oregon law.

**II. BACKGROUND**

Renewable Northwest is a member-based organization that seeks to advance the development of clean, affordable, and reliable renewable energy resources. We have QF developers among our members, and we have years of experience working with the implementation of the Public Utility Regulatory Policies Act of 1978 (“PURPA”) in the various states in which we operate. We support reasonable and balanced approaches to PURPA

implementation. However, PacifiCorp’s proposal to address what it perceives to be a flood of PURPA projects on its system is not a reasonable and balanced approach.

PacifiCorp has not adequately justified the need for its proposed changes to the Commission’s implementation of PURPA. For example, in its Application Regarding Qualifying Facilities (“Application”), PacifiCorp claims to have experienced a “striking” and “dramatic” increase in requests for new long-term QF PPAs since the Commission issued Order No. 14-058<sup>1</sup> in February 2014.<sup>2</sup> However, while PacifiCorp has seen some increase in the number of QF PPA requests, it has not seen a significant increase in the total megawatts requested.<sup>3</sup> Moreover, PacifiCorp’s use of the volume of QF PPA requests to justify its proposal is not appropriate because most requests for contracts do not result in operating projects.<sup>4</sup> In fact, PacifiCorp’s most recent avoided cost rates, which went into effect on July 1, 2015, are much lower than the previous rates and are expected to chill QF development in its territory.<sup>5</sup>

Even if a majority of the requests to PacifiCorp for new long term QF PPAs result in operating projects, PacifiCorp has not demonstrated that it would be problematic for its system to absorb the stable-cost, relatively high capacity value energy from these projects. To the contrary, PacifiCorp’s ratepayers are in a strong position to benefit from—or at least not be harmed by—the addition of clean, renewable QFs to the company’s system given the company’s recent updates to its avoided cost rates. These recent updates should have been designed to

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<sup>1</sup> In Order 14-058, the Commission affirmed the 10 MW eligibility cap and did not revisit the 15-year fixed-price term of QF PPAs.

<sup>2</sup> Application at 1-2.

<sup>3</sup> Obsidian/100, Brown/4-5.

<sup>4</sup> Obsidian/100, Brown/6-8; Obsidian and Cypress Creek/200, Brown/6.

<sup>5</sup> Obsidian and Cypress Creek/200, Brown/11.

accurately project avoided costs and therefore sufficiently address PacifiCorp's perception that the status quo exposes its customers to price risks.<sup>6</sup>

If the Commission is nonetheless inclined to make changes to its implementation of PURPA in response to PacifiCorp's proposals in this docket, we recommend that the Commission steer away from PacifiCorp's proposal to reduce the contract term for QF projects and that the Commission not reduce the eligibility cap for standard QF pricing and PPAs to 100 kW.

### III. ARGUMENT

#### A. **The Commission Should Reject PacifiCorp's Proposal to Reduce the Fixed-Price Term of QF PPAs from 15 years to Three Years.**

PacifiCorp's proposal to reduce the fixed-price term of QF PPAs to three years is inconsistent with Oregon law and sound public policy. As explained below, Oregon's PURPA statute requires utilities to offer twenty-year fixed price contracts. Furthermore, PacifiCorp's proposal is problematic from a policy standpoint because it would deprive Oregon ratepayers of the benefits of a utility portfolio that includes clean energy QFs with long-term contracts.

##### 1. **Oregon Law Requires Fixed Rates for QFs for At Least 20 Years.**

Oregon's statute implementing PURPA requires utilities to offer fixed price contracts of at least twenty years. Specifically, the statute requires utilities "to prepare, publish and file with the Public Utility Commission" their forecasted avoided cost rates "over at least the next 20 years."<sup>7</sup> These prices "shall be reviewed and approved by the commission."<sup>8</sup> Similarly, Oregon law allows a QF to have its avoided cost rates "calculated at the time the legal obligation to

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<sup>6</sup> COP/100, Jacob/2; CREA/100, Skeahan/6.

<sup>7</sup> ORS § 758.525(1).

<sup>8</sup> *Id.*

purchase the energy or energy and capacity is incurred.”<sup>9</sup> Thus, 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.

The legislative history<sup>10</sup> surrounding the adoption of Oregon’s PURPA statute underscores the statute’s requirement that utilities offer QFs fixed-price contracts of at least 20 years. In connection with the passage of Oregon’s PURPA statute, Representative William Bradbury explained that the Oregon law intentionally included requirements that do not exist under federal PURPA law:

The purpose of the bill is to help small power producers or co-generators market their power at a fair price. Federal law has provided since 1978 that utilities have to pay avoided cost to qualifying facilities. They have to pay the cost they avoid by not having to build another plant but by instead buying the small operators or cogenerators power. There are many changes in the federal law and there are many court challenges related to federal law. It is the desire of the House to provide a fairly settled climate for the development of this power. Basically this bill requires two things of utilities not presently required under federal law. . . .

*The second thing 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>[11]</sup>

Thus, Oregon’s PURPA statute requires utilities to offer QFs fixed-price PPAs with terms of 20 years or more, consistent with the utilities’ forecasted avoided costs for that time period. As a result, PacifiCorp’s proposal to reduce the fixed-price term of QF

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<sup>9</sup> ORS § 758.525(2)(b).

<sup>10</sup> *State v. Gaines*, 346 Or. 160, 172 (Or. 2009) (“[A] party is free to proffer legislative history to the court, and the court will consult it after examining text and context, even if the court does not perceive an ambiguity in the statute’s text, where that legislative history appears useful to the court’s analysis.”).

<sup>11</sup> Hearing on HB 2320, Oregon Senate Committee on Energy and Environment, Statement of Representative William Bradbury (June 16, 1983) (emphasis added); *see also* Hearing on HB 2320, Oregon Senate Committee on Energy and Environment, Statement of David Philbrick, ODOE (June 15, 1983) (The provisions in the Bill are generally consistent with federal law. In two areas, HB 2320 goes beyond federal law: *it requires avoided costs to be forecasted and, if desired by the facility owner, obligated under contract for at least the next twenty years*, and it encourages reasonable wheeling policies.) (emphasis added).

PPAs from 15 years to three years is inconsistent with Oregon law and should be rejected. Instead, the Commission should continue to allow QFs to enter into 20-year contracts and should extend the period for which fixed prices are available to 20 years.

**2. Reducing the Fixed-Price Term of QF PPAs Would Deprive Ratepayers of the Benefits of PURPA Projects.**

PacifiCorp's proposal to reduce the fixed-price term of QF PPAs is also problematic from a policy perspective. The ability to enter into a long-term contract is vital to a QF's ability to obtain the necessary financing in order to proceed to development.<sup>12</sup> If adopted, PacifiCorp's request to drastically reduce the fixed-price term of QF PPAs would significantly impair QF projects' ability to obtain the necessary financing.<sup>13</sup> In addition, PacifiCorp's proposal would undercut one of the primary benefits of having PURPA projects as a part of utility portfolios: stable energy prices for ratepayers that result from having long-term, fixed-price contracts.<sup>14</sup> Locking in the price of a QF contract over the long term provides ratepayers with rate stability and helps businesses better project their energy costs over a longer period of time.<sup>15</sup> Reducing the fixed-price term of QF PPAs to three years, as PacifiCorp proposes, would significantly inhibit the development of QF projects, depriving ratepayers of the benefits of a portfolio that includes independently owned generation at a long-term fixed price.

**B. The Commission Should Reject PacifiCorp's Proposal to Lower the Eligibility Cap for Standard QF Pricing and PPAs from 10 MW to 100 kW for Wind and Solar QFs.**

PacifiCorp's proposal to lower the eligibility cap for standard QF pricing and PPAs to 100kW for wind and solar QFs is inconsistent with Oregon law. While Oregon law does not set a specific eligibility cap for standard rates, it provides sufficient direction for Oregon to go

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<sup>12</sup> COP/100, Jacob 2; *see* ODOE/100, Hobbs 3; CREA/100, Skeahan/6.

<sup>13</sup> *Id.*; *see* Staff/100, Andrus/9, 15.

<sup>14</sup> COP/100, Jacob/2; *see* Renewable Energy Coalition/100, Lowe/3, 13-14.

<sup>15</sup> *Id.*

beyond the minimum requirements mandated by federal PURPA law. Oregon’s legislature charged the Commission with implementing policies that will “[i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon’s citizens” and “[c]reate a settled and uniform institutional climate for qualifying facilities in Oregon.”<sup>16</sup> If adopted, PacifiCorp’s proposal to lower the eligibility cap for standard QF pricing and PPAs from 10 MW to 100 kW for wind and solar QFs would decrease, rather than increase, the marketability of energy produced by QFs in Oregon.<sup>17</sup> Adopting the proposal would also give rise to a non-uniform institutional climate. Such a drastic reduction in the eligibility cap for standard QF pricing and PPAs for wind and solar QFs would be inconsistent with Oregon law and should, therefore, be rejected.

#### IV. CONCLUSION

For the reasons stated above, the Commission should reject PacifiCorp’s proposals to lower the eligibility cap for standard QF pricing and PPAs to 100 kW for wind and solar QFs and to reduce the fixed-price term of QF PPAs to three years. Instead, the Commission should maintain the eligibility cap at the 10 MW level, retain the current QF term length of 20 years for all QFs, and extend the period for which fixed prices are available from 15 years to 20 years.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of January, 2016.

*/s/ Silvia Tanner*

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<sup>16</sup> ORS § 758.515(3).

<sup>17</sup> See CREA/100, Skeahan/2-4.