

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1734

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

I. INTRODUCTION

Renewable Northwest submits this reply brief in response to the prehearing and opening briefs submitted by PacifiCorp in support of its proposals to: 1) reduce the fixed-price term of qualifying facility (QF) power purchase agreements (PPA) 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. PacifiCorp’s briefs and testimony have not established that its proposals are consistent with Oregon law and sound public policy.

We urge the Commission to reject PacifiCorp’s proposals as contrary to Oregon law and to sound public policy. Instead, we recommend that the Commission increase the fixed-term of QF PPAs to twenty years, as required by Oregon law. Our prehearing brief explains in detail that the Oregon statutes implementing PURPA intentionally go beyond the requirements in federal law¹ while also highlighting the lack of adequate support in PacifiCorp’s proposal.² This reply brief addresses PacifiCorp’s arguments in support of its proposals.

¹ Renewable Northwest Prehearing Brief at 3-6.

² *Id* at 2-3.

II. ARGUMENT

A. The Commission should reject PacifiCorp’s proposal to reduce the fixed-price term of standard QF PPAs from 15 years to three years

PacifiCorp’s proposal to reduce the fixed-priced term of standard QF PPAs to three years is inconsistent with Oregon law and sound public policy, and would deprive Oregon ratepayers of the benefits of a utility portfolio that includes clean energy QFs with long-term contracts.

Additionally, PacifiCorp uses unsupported assertions and speculation to attempt to justify its proposals.

1. ORS 758.525 requires utilities to offer QF PPAs with a fixed-price term of at least twenty years.

ORS 758.525 gives QFs the right to PPAs with a fixed-price term of at least twenty years by requiring utilities to “prepare, publish and file” their forecasted avoided cost rates “over at least the next 20 years,” while allowing QFs to have their avoided cost rates “calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred”.³ Statements from David Philbrick from the Oregon Department of Energy (ODOE)⁴ and from Representative William Bradbury surrounding the adoption of the statute underscore that requirement.⁵

PacifiCorp attempts to diminish the value of these statements as “cherry picked” quotations

³ ORS §§ 758.525(1), (2)(b).

⁴ 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).

⁵ Hearing on HB 2320, Oregon Senate Committee on Energy and Environment, Statement of Representative William Bradbury (June 16, 1983) (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.*) (emphasis added).

deserving of little weight.⁶ However, Representative Bradbury sponsored the bill, and David Philbrick was one of the primary authors of the bill and his edits to ultimately made it into the final language of 758.525.⁷ Therefore, their statements are entitled to weight.⁸

PacifiCorp mistakenly argues that FERC regulation 18 CFR 292.302 indicates that ORS 758.525 does not provide a minimum fixed price contract term.⁹ However, ORS 758.525(1) expressly requires the utilities to “prepare, publish and file” avoided cost rates “over at least 20 years.”¹⁰ In contrast, 18 CFR 292.302 simply requires utilities “to make data available from which avoided costs may be derived.”¹¹ Hence, PacifiCorp’s statement that 18 CFR 292.302 and ORS 758.525 are “parallel”¹² and that therefore FERC’s interpretation of 18 CFR 292.302 evidences the meaning of ORs 758.525 is baseless. Still, even if 18 CFR 292.302 was comparable to ORS 758.525, PacifiCorp’s argument ignores that Oregon’s legislature expressly and intentionally went beyond the requirements of federal law.¹³

⁶ PacifiCorp’s Opening Brief at 15.

⁷ See Audio Recording, Senate Committee on Energy and Environment, Subcommittee on H.B. 2320, H.B. 2320, March 17, 1983, Tape 104, Side A (Comments of Representative Bradbury, noting Mr. Philbrick assembled a decision matrix for the committee on the bill’s provisions); See Audio Recording, Senate Committee on Energy and Environment, Subcommittee on H.B. 2320, H.B. 2320, March 29, 1983, Tape 120, Side A (Comments of David Philbrick, proposing a change in the bill to require projection of avoided costs for “at least” 20 years, instead of a prior version that only required a projection of 20 years).

⁸ *State v. Kelly*, 229 Or App 461, 466-67 (2009) (In some cases, statements of individual legislators and even nonlegislators may be entitled to some weight. But the amount of weight will depend on the extent to which a case can be made that they are reflective of the intentions of the legislature as a whole. *In the case of statements of individual legislators, the weight accorded often depends on whether the legislator is the author, sponsor, or carrier of a bill or in some other leadership position. . . . In the case of nonlegislator statements, courts tend to be more wary, but do accord them some weight when the nonlegislators sponsored the legislation and who, as a result, are in a good position to describe its purpose and intended effect.*) (emphasis added).

⁹ PacifiCorp’s Opening Brief at 10.

¹⁰ ORS § 758.525(2)

¹¹ 18 CFR § 292.302(b)

¹² PacifiCorp’s Opening Brief at 10.

¹³ Hearing on HB 2320, *supra*, note 4.

2. Current PURPA rules appropriately address customer indifference concerns.

PacifiCorp argues that a 20-year fixed-price term in QF PPAs goes against the customer indifference standard.¹⁴ The Company describes QFs as “must take resources that the Company cannot reject even when the QF contracts price exceeds the Company’s marginal cost”.¹⁵ Bruce Griswold testified that “if the marginal costs of a company gas plant is \$40 per megawatt hour but another alternative, such as a short term firm market purchase, costs only \$30 per megawatt hour, the company would dispatch down the gas plant and buy from the market saving customers \$10 per megawatt hour.”¹⁶ He made that statement as an example of how long-term QFs PPAs are less preferable to company resources because of the long-term exposure in a long-term QF PPA.¹⁷

However, even if the hypothetical gas plant owned by the Company that Mr. Griswold used in his example were to be dispatched down, the fixed costs associated with that plant, which are independent of business activities, would remain.¹⁸ It is, therefore, inappropriate to compare the ability of the company to dispatch down a gas plant (thereby avoiding variable costs, but not fixed costs) in order to take advantage of hypothetically lower marginal cost short term firm market purchases, to the company’s inability to reject QF resources whose contracts are set at avoided cost.

¹⁴ PacifiCorp’s Opening Brief, at 18-19.

¹⁵ *Id.* at 22.

¹⁶ PAC/200, Griswold/14.

¹⁷ Tr. 34:4-9 (Griswold).

¹⁸ Tr. 34:24-35:1 (Griswold).

3. PacifiCorp’s proposed reduction of the fixed-price term in QF PPAs will stifle QF development.

PacifiCorp speculates that its proposal to reduce the fixed-price term in QF PPAs by 80% will not affect QF development.¹⁹ In support of its assertion, the Company states that “the record ... *demonstrates* that developers can obtain financing” under its proposal.²⁰ Additionally, the company states that the “record evidence demonstrates that the development of new financing vehicles such as yieldcos has presented new financing structures and opportunities that would allow for project financing even with reduced fixed-price terms”.²¹ PacifiCorp bases these two statements on testimony by its own witness, Mr. Bruce Griswold, and by ODOE’s witness, Mr. John Hobbs.²² However, while Mr. Griswold’s testimony regarding QF financing has little probative value, Mr. Hobbs’s supports the opposite conclusion. As discussed further below, PacifiCorp is mistaken in its assertion that the evidence in the record demonstrates that developers can obtain financing under PacifiCorp’s proposal.

The testimony of PacifiCorp’s witness fails to demonstrate that PacifiCorp’s proposal will not stifle QF financing. Mr. Griswold testified that financial vehicles such as yieldcos would make financing possible under the company’s proposed reduction of the fixed-price term of QF PPAs.²³ However, Mr. Griswold has no experience working QF financing.²⁴ In fact, Mr. Griswold admitted having a limited understanding of what motivates QF developers to seek specific PPA terms.²⁵ Therefore, Mr. Griswold’s statements that financial vehicles may be

¹⁹ PacifiCorp’s Prehearing Brief at 12; PacifiCorp’s Opening Brief at 21.

²⁰ PacifiCorp’s Prehearing Brief at 10 (emphasis added).

²¹ *Id.* at 13.

²² *Id.* at 13 n.42; PacifiCorp’s Opening Brief at 21, n. 87.

²³ Tr. 76:1-77:1 (Griswold).

²⁴ PAC/100, Griswold/1.

²⁵ Tr. 8:7-12 (Griswold) (Q. And would one of the reasons a new qF select a longer term contracts is because it might help with their obtaining financing for the project? A. I don’t know the rationale for what their decisions are for selecting the term of the contract.); Tr. 74:20-75:7 (Griswold).

available for QFs development facing three year fixed-price term QF PPAs has little probative value and fails to demonstrate that PacifiCorp's proposal will not affect QF financing.

The testimony of Mr. John Hobbs demonstrates that PacifiCorp's proposal will stifle QF financing. According to PacifiCorp, Mr. Hobbs' testimony "notes that sequential three-year financing contracts over the life of any asset are preferred by financiers and not unusual."²⁶ However, Mr. Hobbs testified obtaining financing for QF development under PacifiCorp's proposal would be nearly impossible.²⁷ Unlike Mr. Griswold, Mr. Hobbs has experience with the factors that affect the financing of renewable energy projects.²⁸ Hence, Mr. Hobbs testimony has a high probative value and weighs in favor of finding that PacifiCorp's proposal will have a strong negative effect on the availability of QF financing.

The evidence in the record weighs in favor of finding that PacifiCorp's proposal would severely undermine QFs ability of obtaining financing. In addition to Mr. Hobbs, witnesses with representing organizations with members with such experience testified that PacifiCorp's proposal would affect ability of QFs to obtain financing.²⁹ Given those parties experience with the requirements for financing QF projects, their testimony has high probative value and weighs in favor of a determination that PacifiCorp's proposal will have a strong negative impact on the availability of financing for QF development.

²⁶ PacifiCorp's Prehearing Brief at 13.

²⁷ ODOE/100, Hobbs/3-4 ([T]hree year QF standard contracts introduce too much price risk into an essentially closed market for the risk tolerance of most lenders, in my experience. . . . Most lenders would not put capital at risk for the benefit of a QF under the proposed standard contract term reduction without having the term of the subsequent non-standard contract already agreed upon.)

²⁸ ODOE/100, Hobbs/1.

²⁹ See e.g. CREA/100, Skeahan/6.

4. The QF development landscape and policies of other jurisdictions where PacifiCorp operates support a long fixed-price term in standard QF PPAs in Oregon.

The current state of QF development in Idaho and Washington demonstrate that PacifiCorp's proposal to reduce the fixed-price term of QF PPA would affect QF development. In Washington, a state with five-year fixed-price terms for standard QF PPAs,³⁰ QF development in PacifiCorp's territory is virtually non-existent. Currently, only 3 QFs with a total installed capacity of less than 6 MWs sell power to PacifiCorp in that state.³¹ Of those three facilities, two were developed under QF PPAs with 25 years of fixed-prices,³² and only one could be developed under a QF PPA with a fixed-price term of five years.³³ Idaho now has a similarly uneventful QF development landscape. The state's Public Utility Commission recently decreased the fixed-price term of QF PPAs to two years.³⁴ Since, zero solar QF PPAs have been signed.³⁵ Hence, PacifiCorp's own examples undermine its argument that its proposed reduction of the fixed-price term for QF PPAs will not negatively affect QF development in Oregon.

III. CONCLUSION

PacifiCorp is proposing that the Commission to weakens its implementation of Oregon's PURPA law, a request that the Commission has repeatedly refused. Yet, the Company failed to provide

³⁰ PacifiCorp's Prehearing Brief at 16

³¹ Tr. 13:3-15 (Griswold).

³² Tr. 13:17-23 (Griswold).

³³ Tr. 13:24-14:4 (Griswold).

³⁴ PacifiCorp's Prehearing Brief at 16.

³⁵ This is evidenced by looking at the open and closed cases in Idaho PUC website since each QF PPA must be approved in an IPUC Case. The last solar contract approved would be a 20-year contract prior to the term reduction.

sufficient evidence to support its assertions, largely relying in flawed comparisons, assumptions, and on speculation. The Commission should reject PacifiCorp's proposal

RESPECTFULLY SUBMITTED this 19th day of February, 2016.

/s/ Silvia Tanner _____

Silvia Tanner
Staff Counsel
Renewable Northwest
421 SW Sixth Ave, Suite 1125
Portland, OR 97204
(503) 223-4544
silvia@renewableNW.org