

**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)
)
_____)

RESPONSE TESTIMONY OF

Brian Skeahan

ON BEHALF OF

The Community Renewable Energy Association

October 15, 2015

1 **Q. Please state your name, employer, and business address.**

2 A. My name is Brian Skeahan, and I am employed as the executive director of the
3 Community Renewable Energy Association (“CREA”). My business address is 1113 Kelly
4 Avenue, Dalles, Oregon, 97058.

5 **Q. On whose behalf are you testifying?**

6 A. I am submitting testimony on behalf of the CREA.

7 **Q. Please describe your educational and professional background.**

8 A. I have a Bachelor of Arts in Political Science and Public Administration from the
9 University of Nebraska, and a Master of Science in Public Administration from the University of
10 Oregon. I have over 30 years of experience in the public utility industry. My utility career
11 began at the Springfield Utility Board, working in rates, power management and regional issues.
12 I served as a General Manager at a municipal utility in Nebraska for seven years, at Klickitat
13 Public Utility District (“PUD”) in Washington for nine years and at Cowlitz PUD for eight years.
14 During this time I was heavily involved in renewable energy development and policy, wholesale
15 and retail rates, and various Pacific Northwest regional power matters.

16 **Q. Have you testified in previous cases before administrative agencies on energy
17 regulatory topics?**

18 A. I have testified as an expert witness in Bonneville Power Administration (“BPA”) rate
19 proceedings and in the Public Utility Commission of Oregon’s (“Commission” or “OPUC”) UM
20 1610 proceedings.

21 **Q. What is CREA’s interest in this proceeding?**

22 A. CREA is an Oregon Revised Statutes Chapter 190 intergovernmental association.
23 CREA’s members consist of individuals, businesses, and local governments seeking to promote

1 locally-owned renewable energy projects using all forms of renewable generation recognized in
2 Oregon’s Renewable Portfolio Standard (“RPS”), including biomass, geothermal, hydropower,
3 ocean thermal, solar, tidal, wave, wind and hydrogen. CREA is comprised of several Oregon
4 counties which provide active participation through their county commissioners, including
5 Sherman, Wasco, Gilliam, Harney, Hood River, Morrow, Polk, Union, Wheeler, Curry, and
6 Wallowa. In addition to these counties, CREA’s current membership includes the Mid-
7 Columbia Council of Governments, Columbia Gorge Community College, and 25 irrigation
8 districts, businesses, individuals and non-profit organizations who have interest in a viable
9 community renewable energy sector for Oregon.

10 **Q. What topics will your testimony address?**

11 **A.** My testimony will address PacifiCorp’s proposal to lower the size threshold for wind and
12 solar contracts from 10 megawatts (“MW”) to 100 kilowatts (“kW”), and shorten the contract
13 term for all qualifying facilities (“QF”) from 15 years of fixed prices to three years.

14

15 **THE 10 MW SIZE THRESHOLD SHOULD NOT BE REDUCED**

16 **Q. Do you support keeping the Commission’s current 10 MW size threshold for all**
17 **QFs?**

18 **A.** Yes.

19 **Q. Do you believe that the Commission should lower the eligibility cap for any resource**
20 **types?**

21 **A.** No. As CREA recently testified in the UM 1610 proceedings, lowering the eligibility cap
22 will eliminate the opportunity for smaller developers to sell the output of renewable energy
23 projects to PacifiCorp. Oregon’s RPS established as a statewide goal that eight percent of
24 Oregon’s retail electric load be provided by community-scale projects of 20 MW of installed

1 capacity or less.¹ The legislature further instructed that “All agencies of the executive
2 department as defined in ORS 174.112 shall establish policies and procedures promoting the goal
3 declared in this section.”² PacifiCorp’s proposal runs counter to Oregon’s RPS, and the
4 Commission should not adopt it.

5 **Q. Why is being under the size threshold for standard contracts important for**
6 **developers of small generation projects?**

7 **A.** The primary reason is to avoid being subject to extremely costly negotiation of avoided
8 cost rates and power purchase agreements (“PPA”). The investor owned utilities have an
9 inherent advantage in such situations, possessing relatively large legal and technical staff, paid
10 for by Oregon’s ratepayers, and the utilities can and do take positions which CREA believes
11 result in long, drawn-out negotiations of non-standard contracts. While the small independent
12 power producer must pay for the costs of negotiating contracts and applicable rates, the investor-
13 owned utility’s costs are ultimately paid for by the ratepayers, creating significant imbalance of
14 power in the negotiation.

15 The small business person or farmer attempting to incorporate a biomass generation
16 project into their facility, or erect several wind turbines on their farm, or add solar panels to the
17 roof of their building generally do not have the expertise or financial resources to negotiate such
18 prices and terms without costly third-party assistance and expense. These “soft costs” can make
19 an otherwise financially and technically feasible smaller project less viable. Standard contracts,
20 available to projects under the eligibility cap, can reduce these soft costs and reduce the time
21 associated with costly contract negotiations.

¹ UM 1610 CREA/100, Hilderbrand/11-13.

² ORS 469A.210.

1 As CREA recently testified in docket UM 1610, the QF's eventual revenue stream is very
2 speculative prior to the time of PPA execution.³ The developer's expenses are 100 percent at
3 risk until the project PPA is executed and construction financing is closed.⁴ In declining to
4 reduce the eligibility cap last year, the Commission specifically relied upon the testimony of
5 CREA and others on this point, explaining: "These parties note that a QF developer may only
6 have access to financing after a PPA has been signed; prior to that time, the QF developer may
7 rely only on the developer's own resources. Small QFs under 10 MW may lack the resources to
8 negotiate complex modeling and inputs with a utility."⁵ These facts have not changed.

9 **Q. How important is it to have an expeditious contract completion process?**

10 **A.** Very important. Simply stated, time is money. As noted above, time-consuming
11 processes increase the developer's costs in getting to an executed PPA. By unreasonably
12 delaying PPA execution, other deadlines could be compromised and commercial operation could
13 be delayed, resulting in a corresponding delay in the developer seeing revenue on their
14 investment. Delay exposes the developer to changes in market prices for its output and demand
15 for its power, as well as a risk that components for the project or interconnection costs may
16 change in a manner that renders the project uneconomic. A contract process that cannot be
17 consummated in a timely manner creates a cash flow situation that many small developers find
18 untenable.

19

20 **THE COMMISSION SHOULD INCREASE THE TERM OF FIXED PRICES**

21 **Q. What are the Commission's current requirements regarding contract terms?**

22 **A.** QFs have the option to enter into contracts with fixed prices for the first 15 years after the

³ UM 1610 CREA/100, Hilderbrand/13.

⁴ *Id.*

⁵ Order No. 14-058 at 7.

1 commercial operation date, and will receive an un-fixed, market-based price for an additional
2 five years if they elect a 20-year term. This provides only a 15-year revenue stream for the
3 project's generation that can be estimated based on operation of the facility, whereas the life of
4 the facility will be in excess of 15 years. However, the QF will not even receive that revenue
5 unless it actually generates and delivers output at the level it expected when it committed to do
6 so. The QF does not get paid unless it actually delivers the output.

7 **Q. Do you support the Commission's current policy?**

8 **A.** As CREA recommended in docket UM 1610, we propose that the Commission should
9 increase the length of the term for which fixed prices are available. Specifically, CREA's
10 witness, Mr. Ormand Hilderbrand, testified in that docket:

11 "The current term of 15 years with fixed rate is the absolute minimum that can be
12 financed by a 10 MW project. Preferably, QFs would have the option to obtain fixed rates
13 for at least 20 years. I believe it would be reasonable for the Commission to extend the
14 fixed rate term to 20 years."⁶

15 In response, the Commission declined to increase or decrease the term of fixed rates for 15 years
16 from the commercial operation date. Because PacifiCorp has raised the issue again, CREA takes
17 the same position as it did in the UM 1610. The Commission should increase the availability for
18 fixed prices from 15 years to 20 years, at least for small QFs under the 10 MW eligibility cap.

19 **Q. Does CREA have any further reasons why the contract term should be increased to**
20 **20 years of fixed avoided cost rates?**

21 **A.** CREA intends to provide legal briefing that 20 years is actually the minimum term for
22 fixed prices the Commission should implement under the applicable legal requirements, but I am
23 not an attorney and cannot testify to the specifics of that position.

⁶ UM 1610 CREA/100, Hilderbrand/30.

1 **Q. What has PacifiCorp proposed?**

2 **A.** Three-year contract terms for all QFs.

3 **Q. Do you support PacifiCorp's proposal?**

4 **A.** No. Three-year contracts would make the financing of small projects impossible.

5 Lenders require a revenue stream from the project with sufficient certainty to pay the senior lien
6 debt associated with project financing as well as sufficient operating and maintenance costs over
7 the life of the indebtedness. The term of the loan must be sufficiently long to keep the principle
8 and interest payments low enough to make the project financially feasible. Finally, prudent
9 financial practice would provide for the term of the debt to be comparable to the useful life of the
10 project. PacifiCorp's proposed three-year contract term meets none of these criteria, and CREA
11 believes it is primarily intended to preclude small QF projects from being financed and
12 constructed.

13 **Q. Do you believe PacifiCorp's proposal to reduce the length of contract term and**
14 **reduce the eligibility cap are necessary to protect its ratepayers?**

15 No. PacifiCorp's argument fails on multiple fronts. CREA believes the most appropriate
16 way for PacifiCorp to protect its ratepayers is through the establishment of appropriate avoided
17 costs. PURPA recognized the need to protect ratepayers while providing a level playing field for
18 developers of qualifying facilities by providing developers payment equal to the cost an investor-
19 owned utility would face if it acquired the QF's energy and capacity from other resources.
20 PacifiCorp has done precisely this. PacifiCorp significantly reduced its avoided cost rates in
21 August 2014.⁷ Additionally, under the new framework from docket UM 1610, PacifiCorp again
22 significantly reduced its avoided cost rates during the first annual June 1 update, effective June

⁷ Order No. 14-295.

1 24, 2015.⁸ If we presume that PacifiCorp's approved avoided costs are reasonably accurate, then
2 their ratepayers should be reasonably protected from upward rate pressure resulting from QF
3 development. PacifiCorp's request for shorter contract terms and reduced project size essentially
4 asks the Commission to rule that PacifiCorp's requested avoided costs are in error. Or if one
5 takes a more cynical view, PacifiCorp is aware that their request for shorter contract terms will
6 make the financing of QFs impossible, thereby eliminating the competition for resource
7 development provided by independent power developers. CREA believes that maintaining this
8 competition in fact serves the long term interest of PacifiCorp's ratepayers.

9 **Q. Did the Commission recently take other steps to respond to concerns raised by**
10 **PacifiCorp?**

11 **A.** Yes. The Commission recently closed a perceived loophole in the five-mile separation
12 rule for access to standard rates and contracts. Commonly owned QFs must now be at least five
13 miles apart in order to have access to the standard rates and standard contracts, unless the
14 common ownership is limited to a passive investor and each of the QFs meets strict community-
15 based or family-owned criteria.⁹ This new rule eliminates the possibility of using the standard
16 rates and standard contract to construct a large generation facility with a single owner.

17 **Q. Is there other evidence that indicates that renewable energy development has not**
18 **had a significantly negative impact on PacifiCorp's rates?**

19 **A.** Compliance filings submitted to the OPUC by PacifiCorp and Portland General Electric
20 Company ("PGE") indicate that the rate impact of Oregon's renewable portfolio standard has
21 increased rates less than one percent, much less than what the IOUs anticipated at the time the
22 RPS was being debated. This number is supported by similar analysis on the impact of

⁸ Order No. 15-205.

⁹ Order No. 14-058 at 26-27.

1 Washington's RPS on its utilities. The amount of additional renewable development under the
2 QF process will be less than that under the RPS and as such the rate impact should be negligible.

3 **Q. Is PacifiCorp's prediction of QF development reasonable?**

4 **A.** No. CREA believes that PacifiCorp's estimated influx of QF energy is significantly
5 overstated.

6 CREA believes that PacifiCorp significantly overstates the amount of QF development
7 that will likely occur in Oregon. CREA has reviewed and supports the testimony presented by
8 Obsidian Renewables, LLC in this docket (Obsidian/100). As Obsidian's testimony makes clear,
9 the level of current QF interconnection requests do not constitute a "dramatic increase." CREA
10 believes that PacifiCorp does not accurately account for the level of project mortality, i.e. the
11 difference between projects that commence the QF application process and the number of
12 projects that actually enter into a PPA and subsequently achieve commercial operation.
13 PacifiCorp appears to justify their forecast of QF installation on the basis of the expiration of
14 certain tax incentives. PacifiCorp suggests that expiration of tax benefits will significantly reduce
15 the project mortality that they and other utilities have historically seen, but provides no support
16 or justification for this suggestion.

17 Finally, CREA believes that PacifiCorp's testimony regarding the amount of QF
18 generation relative to its load is disingenuous. PacifiCorp would have the Commission believe
19 that QFs will soon comprise a significant portion of their load. They state that existing QFs and
20 587 MW of proposed QFs in Oregon at their nameplate capacity would provide 56 percent of
21 their average retail load and 90 percent of their minimum load. Taken on the face, these
22 numbers would present legitimate concern. However, even a casual parsing of the testimony
23 suggests the conclusion which it implies simply is not logical. PacifiCorp's primary concern

1 seems to be wind, which has a capacity factor of approximately 30 to 35 percent, and solar which
2 has a capacity factor of approximately 18 to 20 percent. As such, even if one presumes that all
3 of the 587 MW was developed and one half was solar and half was wind, the amount of energy
4 produced would be about ten percent of PacifiCorp's average load – a far cry from the 56 percent
5 PacifiCorp seems to imply in their testimony. And of course the contribution of Oregon solar to
6 PacifiCorp's minimum load is negligible because minimum load occurs at night, when solar QFs
7 will not deliver energy. CREA believes that these obvious points cast significant doubt
8 regarding PacifiCorp's credibility and its entire testimony in this docket

9 **Q. Does this conclude your testimony?**

10 **A. Yes**

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