ORDER NO. 16 130

ENTERED: MAR 29 2016

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1734

In the Matter of PACIFICORP, dba PACIFIC POWER, Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap.	ORDER

DISPOSITION: APPLICATION GRANTED IN PART; OBSIDIAN MOTION DISMISSED AS MOOT

I. SUMMARY

In this order, we respond to PacifiCorp, dba Pacific Power's application to modify the terms and conditions governing the company's obligations under the Public Utility Regulatory Policies Act (PURPA), as they relate to power purchase agreements (PPAs) with wind and solar qualifying facilities (QFs). Based on the information developed through this proceeding, we propose to reduce the eligibility cap for avoided costs prices in standard contracts to 3 megawatts (MW) for solar QFs. We deny the company's request to reduce the negotiated contract term from 20 years to 2 years for all projects above 100 kilowatts (kW).

II. BACKGROUND

PURPA, federal legislation enacted in 1978, has the primary purpose of providing a market for the electricity produced by small power producers and co-generators. Although PURPA is a federal law, states are responsible for implementing significant aspects of the law, and Oregon has enacted its own complementary legislation in ORS 758.505 *et al.* In several previous dockets, we have considered, applied, and revised the rates, terms, and conditions for QF PPAs in Oregon.

Two of those orders are relevant to this proceeding. In Order No. 05-584, docket UM 1129, we provided QFs with nameplate capacity of 10 MW and below the opportunity to enter into standard contracts for 20 years, with 15-year fixed prices. In Order No. 14-058, docket UM 1610, we later affirmed the 10 MW eligibility cap and

20-year term for standard contracts, reasoning that standard contract terms are intended to reduce transaction costs associated with QF contract negotiation.

III. PROCEDURAL HISTORY

On May 21, 2015, PacifiCorp filed an application to modify the terms and conditions under which the company enters into PPAs with QFs. The company asks that we: (1) reduce the fixed-price term of QF PPAs from 15 years to three years; and (2) lower the eligibility cap for standard QF pricing and PPAs from 10 MW to 100 kW for wind and solar QFs.

The following filed petitions to intervene and were granted party status in this proceeding: Community Renewable Energy Association (CREA); the Renewable Energy Coalition (REC); Renewable Northwest (Renewable NW); Oregonians for Renewable Energy Progress; the Oregon Department of Energy (ODOE); Northwest Energy Coalition; Obsidian Renewables, LLC; Cypress Creek Renewables, LLC; the Sierra Club; the Northwest & Intermountain Power Producers Coalition; Portland General Electric Company; Gardner Capital Solar Development; and the City of Portland.

During the pendency of these proceedings, the parties filed three substantive motions. On June 1, 2015, REC and CREA filed a joint motion to dismiss the application. We denied the motion in Order No. 15-209. On July 9, 2015, PacifiCorp filed a motion for interim relief pending resolution of the requests in its application with regard to only the eligibility threshold for standard QF pricing. We granted the motion in Order No. 15-241, and reduced the eligibility threshold for standard QF PPAs from 10 MW to 3 MW for solar QFs on an interim basis. Finally, on November 13, 2015, Obsidian moved to hold the proceeding in abeyance pending our consideration of a petition for rulemaking it filed addressing many of the issues in these proceedings. In Order No. 16-056, docket AR 593, we granted, in part, Obsidian's petition for rulemaking, thus rendering its motion to stay these proceedings moot.

An evidentiary hearing in these proceedings was held on January 21, 2016. Briefs were filed by PacifiCorp, REC, CREA, Sierra Club, Renewable NW, and Staff. All proffered testimony, supported by witnesses' affidavits, was admitted into the record and the record was closed on March 2, 2016.

IV. POSITIONS OF THE PARTIES[1]

PacifiCorp asks that we lower the company's standard contract eligibility cap for wind and solar QFs to 100 kW under PURPA and reduce both the standard and negotiated contract term of from 20 years to 3 years. The company states that its request is intended to mitigate customer risk resulting from the inherently speculative nature of long-term avoided cost forecasts and to ensure that, to the greatest extent possible, customers pay no more than the company's actual avoided costs for QF energy and capacity.

[1] Although Obsidian and Cypress Creek filed joint direct testimony, neither party participated in the briefing process.

CREA and REC both urge rejection of PacifiCorp's proposal with respect to standard contract eligibility, believing that the QF size threshold for standard contracts should remain at 10 MW. CREA asserts that PacifiCorp has not shown that it has actually executed negotiated contracts with QFs for full avoided cost rates as required by law and the record demonstrates that there are almost no Oregon QFs above the eligibility cap that have successfully negotiated a contract and rates.[2] REC contends that drastically reducing the eligibility cap for QFs seeking standard contract terms would make financing difficult and decrease the marketability of energy produced by Oregon QFs.

CREA, REC, and Renewable NW contend that we should maintain the standard contract eligibility cap at 10 MW for all QF resource types and increase the length of the contract term for fixed avoided cost rates from 15 to 20 years. They contend that the applicable statutes and federal regulations require a 20-year contract term with fixed prices throughout. REC also contends that we should ensure that all existing QFs that renew their contracts are paid for capacity during the resource sufficiency period, because their capacity has already been included in the utility's load resource balance and could not be considered surplus power.

The Sierra Club does not take a position on PacifiCorp's proposal to lower the standard contract eligibility cap, but believes that shortening QF contract terms to three years will effectively eliminate renewable QF development in Oregon. The Sierra Club notes that, when the Idaho Public Utilities Commission reduced contract terms during 1996-2001, there was a dramatic decrease in both installed capacity and contracts in Idaho.[3]

The ODOE favors the higher 10 MW eligibility cap for wind projects, but supports use of 3 MW as a reasonable breakpoint for solar.[4] The ODOE notes that the five-mile minimum distance to disaggregate projects will more likely affect a developer's ability to site wind projects than solar projects.[5]

Staff recommends that we lower the eligibility cap for PacifiCorp's standard contracts with wind and solar QFs to somewhere between 2 and 4 MW, but states that it is not necessary to lower the cap for other types of QFs because other resource types are not as easily disaggregated as solar and wind facilities. Staff acknowledges that a 100 kW eligibility cap could be more effective at deterring disaggregation, but believes that the benefit obtained by lowering the eligibility cap to 100 kW for PacifiCorp, rather than somewhere between 2 and 4 MW, is not so great as to warrant the additional decrement.

Staff also recommends that we affirm the decision in Order No. 07-360[6] that grants QFs the right to unilaterally select a contract term of up to 20 years with 15 years of fixed prices. Staff does not believe that a 20-year contract term is legally required, but interprets the decision as seeking a balance between the QFs' needs of obtaining

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[2] REC/300, Lowe/3.
[3] Sierra Club/100, McGuire/15-17.
[4] ODOE/200, Broad and Carver/5.
[5] *Id.* at 4.
[6] Docket No. UM 1129 (Aug 20, 2007).

financing and limiting the potential for actual avoided costs to diverge from forecasted avoided costs. In practical terms, Staff believes that, while a term of three years may limit the risk that the utilities' actual avoided costs will vary from the contracted to avoided cost prices, the shorter term would almost certainly inhibit rather than incent QF development.

V. DISCUSSION

A. Nameplate Capacity of QF Projects Eligible for Standard Contracts

Although federal rules implementing PURPA require utilities to offer standard contracts to QFs with a nameplate capacity of 100 kW and less, state commissions may establish a higher eligibility cap.[7] Over the years, we have increased the nameplate capacity of QFs eligible for standard contracts – first to 1 MW in 1991,[8] and then to 10 MW in 2005.[9]

Due to unprecedented growth in QF activity in PacifiCorp's service territory, we recently granted the company's request for temporary relief and lowered the eligibility cap for standard contracts to 3 MW for solar QF projects. In Order No. 15-241, we stated:

> PacifiCorp's filings persuade us that there has been significant growth in QF development in its territory. Interim relief is appropriate to protect ratepayers from the possibility of being charged more than PacifiCorp's avoided power costs during the pendency of our review. We recognize that intervenors dispute some of PacifiCorp's figures and raise questions about whether all these QF projects will actually be built. Nonetheless, we find sufficient reason to provide a modest measure of relief pending our further analysis of market conditions and Commission QF policies. Furthermore, as PacifiCorp notes, having granted Idaho Power's request for interim relief in Order No. 15-199, a failure to provide a similar 3 MW cap on solar QF project eligibility to PacifiCorp might well encourage developers to engage in geographic arbitrage.[10]

We now address whether to modify the 10 MW eligibility cap on a more permanent basis. Any change to the standard contract eligibility threshold should be targeted to remedy specific and verified problems PacifiCorp has had with the QF contracting process.

Based on our review, we conclude that the threshold for standard contracts should be reduced on a more permanent basis. In 2015, a large developer executed standard contracts with PacifiCorp for seven 10 MW solar facilities and one 8 MW solar facility over a one week period and another developer executed five standard contracts for

[7] 18 C.F.R. 292.304(c)(1),(2).
[8] Order No. 91-1383 (1991 WL 501291 at 10).
[9] Order No. 05-584 at 15 (May 13, 2005).
[10] Order No. 15-241 at 3.

36.5 MW of solar on one day.[11] Although the vast majority of the projects were for 5 MW and above, and most were 10 MW, there were three that were 3 MW or less.[12] This indicates that QF projects located in PacifiCorp's service area as small as 3 MW can be viable.

Accordingly, we find that the eligibility threshold should be 3 MW for solar projects. We restrict our decision, however, to only the avoided cost prices contained in the standard contracts. A primary advantage of the standard contract is that it guarantees for the applicant the certainty of fixed avoided cost rates for the project's output over a long term. It is primarily for this reason that PacifiCorp sought to decrease the eligible nameplate capacity for QF projects.

We find no factual basis to support a reduction to the eligibility threshold for wind QFs. Thus, we conclude that the eligibility standard should remain at 10 MW for wind QF projects.

B. Standard Contract Term

PacifiCorp seeks to shorten the contract term for both standard and negotiated QF contracts to a two-year minimum. Other parties oppose the company's proposal on both legal and policy grounds.

For reasons set forth in Order No. 16-129, issued concurrently with this order, we adhere to our current policy. We conclude that ORS 758.525 does not mandate a particular term for QF contracts, and that our use of 20-year contracts, with prices fixed at avoided costs for 15 years followed by indexed pricing for the remaining five years, continues to have merit.

VI. ORDER

IT IS ORDERED that:

1. PacifiCorp, dba Pacific Power's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap for wind and solar projects is approved to the extent specified in this order and denied in all other respects. We direct our Staff to include these changes through rulemaking as appropriate.

[11] Staff/100, Andrus/17.
[12] *Id.* at 17-18.

2. Obsidian Renewables, LLC's Motion to Hold Procedural Schedule in Abeyance, filed on November 13, 2015, is dismissed as moot.

Made, entered, and effective MAR 29 2016.

Susan K. Ackerman
Chair

John Savage
Commissioner

Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.