

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1794

In the Matter of PACIFICORP, dba)	
PACIFIC POWER,)	COMMUNITY RENEWABLE ENERGY
)	ASSOCIATION AND RENEWABLE
Investigation into Schedule 37 - Avoided)	ENERGY COALITION'S REPLY
Cost Purchases from Qualifying Facilities of)	COMMENTS REGARDING
10,000 kW or Less)	CONTINUING PROCEEDING
_____)	

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”) and the Renewable Energy Coalition (the “Coalition”) (collectively the “Joint QF Parties”) file these reply comments urging the Oregon Public Utility Commission (the “Commission” or “OPUC”) to reject PacifiCorp’s arguments and to issue an order resolving the issues raised by the qualifying facility (“QF”) parties in this proceeding. At minimum, the Commission should adjust the sufficiency period for PacifiCorp’s renewable resources before PacifiCorp’s 2017 integrated resource plan (“IRP”) concludes. Should the Commission follow its inclination to close this docket and focus on PacifiCorp’s 2017 IRP without a change that reflects PacifiCorp’s actual plans and actions to acquire renewable resources by 2020, it would essentially allow PacifiCorp’s inaccurate avoided cost rates to be in effect for at least two years, to the detriment of QFs and customers alike.

The Commission’s process for setting avoided cost rates contemplates resolving post-IRP challenges, and allows for swift resolution of the issues at the heart of this proceeding. Simply suggesting that the parties “give up” on PacifiCorp’s current rates and turn to the next IRP cycle does not provide any, let alone adequate, relief to QFs. The Commission acknowledged the due

process concerns at issue in these dockets when opening this proceeding.¹ And the Commission now acknowledges that this process has raised “legitimate questions” about changes outside of the IRP cycle.² Rather than close this docket, the Commission should resolve these concerns, and force PacifiCorp to establish avoided cost rates that reflect their publicly stated positions as to when they are planning to acquire new resources.³ PacifiCorp could not wait for IRP acknowledgment when it issued its 2016 renewable request for proposal (“RFP”) and has claimed that “PacifiCorp cannot wait until the 2017 IRP is acknowledged” before issuing its 2017 Renewable RFP,⁴ and the Commission should not take any more time than is absolutely necessary to re-set PacifiCorp’s avoided cost rates before the 2017 IRP is acknowledged.

The Commission used a “good enough” approach to set PacifiCorp’s current rates, and should do so again now. PacifiCorp’s 2028 renewable sufficiency period was set at a public meeting and is based on PacifiCorp’s existing REC bank due to numerous, significant changes in PacifiCorp’s resource acquisition plans throughout its IRP.⁵ The Commissioners discussed that they were not sure what the actual date should be, only intended to set temporary rates, and believed that this expedited contested-case process would allow parties to more thoroughly vet

¹ Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 1:26:52 (Aug. 16, 2016).

² Order No. 17-176 at 3.

³ See e.g., Re PacifiCorp, dba Pacific Power, Request for Proposals of an Independent Evaluator to Oversee the Request for Proposal Process, Docket No. UM 1845, Application at 2 (June 1, 2017) (identifying a “time-limited resource opportunity” to acquire up to 1,270 MW of new renewable resources that “must achieve commercial operation by the end of 2020”).

⁴ Id. at 6.

⁵ Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 39:30 to 1:42:52 (Aug. 16, 2016).

that 2028 date. Applying that same logic here, the Commission should update PacifiCorp's sufficiency period again now, based on PacifiCorp's new resource acquisition plans, and then allow PacifiCorp's 2017 IRP to more thoroughly vet the 2020 sufficiency date.

II. BACKGROUND

The background and timing of the relevant events in this proceeding have been set out in the prior pleadings and will not be repeated here. Three key items, however, are worthy of repeating in this context. First, the Renewable Energy Coalition challenged (but the Commission did not address) the veracity of the data inputs and assumptions in PacifiCorp's 2015 IRP proceeding, specifically arguing in comments (the only form of participation allowed) that PacifiCorp's sufficiency/deficiency demarcations were not accurate. Next, because IRPs are not contested case proceedings, and the deficiency dates were not part of PacifiCorp's action plan (or the IRP horizon), the Commission simply ignored without addressing the challenge to the sufficiency periods until PacifiCorp's subsequent avoided cost filing. Finally, this proceeding was intended to provide the Joint QF Parties an opportunity to vet PacifiCorp's data, and determine whether PacifiCorp's sufficiency periods were accurate. And recent events have now proven the existing rates wrong. Thus, PacifiCorp's deficiency dates have never been fully analyzed. Given this history, the Commission's inclination to preemptively close this docket violates general principles of due process because it would effectively prevent any challenge on the merits to the rates for over two years.

III. REPLY

A. This Proceeding Is the Normal Process for Establishing Avoided Cost Rates and PacifiCorp Should Be Encouraged to Participate Accordingly

The Commission's normal process for setting avoided cost rates begins with a utility's acknowledged IRP, but does not end there. The Commission has encouraged parties to challenge avoided cost rate filings that are based on stale, or inaccurate information.⁶ When a utility is using inaccurate information to calculate its avoided cost rates, parties have the right to test the veracity of those calculations. And that challenge is not supposed to be limited to merely re-checking the math used by the utility, but to determine whether the rates were accurately set based on the Commission's approved methodologies.

The unresolved issues in this proceeding have been raised repeatedly and should be resolved before this docket is closed. The appropriate deficiency date was raised in PacifiCorp's 2015 IRP, and PacifiCorp's post-IRP avoided cost filing with the Commission ultimately agreeing that PacifiCorp's IRP would not result in accurate avoided costs.⁷ So, the Commission

⁶ Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006) (encouraging parties to seek suspension of an avoided cost filing to address concerns about natural gas forecast, or any other aspect of a utility's filing); see also Re Investigation into determination of resource sufficiency, pursuant to Order No. 06-538, UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010); Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 36-37 (May 13, 2005).

⁷ Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Joint QF Parties' Comments at 23 (July 1, 2016) (citing Re PacifiCorp 2015 IRP, Docket No. LC 62, Coalition Comments at 4-5 (Aug. 27, 2015); Re PacifiCorp 2015 IRP, Docket No. LC 62, Public Meeting at 1:23 to 1:26 (Dec. 17, 2015)); Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 1:27 (Mar. 22, 2016); Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Order No. 16-117 at 1 (Mar. 23, 2016); see also Re PacifiCorp 2015 IRP, Docket No. LC 62, Order No. 16-

directed parties to informally resolve the issues, which the parties were unable to do.⁸ When PacifiCorp made another avoided cost filing based on a 2020 deficiency date (and then changed that date at the public meeting), the Commission again agreed that PacifiCorp’s filing would not result in accurate avoided costs (after setting temporary rates with a 2028 deficiency date), directing parties to resolve the issues in this expedited contested case.⁹ The Commission never suggested that PacifiCorp’s current avoided costs were accurate, but rather that the Commission was unsure how SB 1547 would affect PacifiCorp’s plans to acquire new resources.¹⁰ Thus, the Commission set a 2028 date as a short-term stop gap until PacifiCorp’s actual resource plans could be determined, which is readily apparent right now given PacifiCorp’s repeated statements and actions in non-PURPA cases.

071 (Feb. 29, 2016) (“After our December 17, 2015 Special Public Meeting, PacifiCorp and other stakeholders introduced House Bill 4036 that would significantly amend Oregon’s renewable portfolio standard and generally eliminate the use of coal-fired generation in Oregon by 2030. If passed, this legislation likely will affect PacifiCorp’s action plan contained in its 2015 IRP. We remind the company that IRP Guideline 3(f) requires a utility to file an IRP update once a utility anticipates a significant deviation from its acknowledged IRP.”).

⁸ Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Order No. 16-117 at 1 (Mar. 23, 2016).

⁹ Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Application to Update Schedule 37 at 1-2 (June 21, 2016); Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 1:26:52 (Aug. 16, 2016); Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Order 16-307 at 1 (Aug. 18, 2016).

¹⁰ See Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 1:29:30 (Aug. 16, 2016); Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Order 16-307 at 1 (Aug. 18, 2016).

PacifiCorp points out that the process for setting avoided cost prices is well established, but fails to acknowledge that its comments actually suggest a dramatic deviation from that well-established process. PacifiCorp is suggesting we simply skip determining the accuracy of the post-IRP adjustments to its avoided cost determinations and move on to the next IRP cycle. But that is not the normal process and would result in a two-year period in which the rates do not accurately reflect the utility's resource plans, when the Company plans to acquire 1,270 MW of non-QF renewable resources.

PacifiCorp also highlights the "value in the sequential nature of reviewing avoided costs after acknowledgement of a utility's IRP" without addressing that it is suggesting we just stop reviewing its avoided costs after the acknowledgement of its last IRP.¹¹ There is zero value in reviewing avoided costs after acknowledgement of a utility's IRP, if that review does not produce tangible results and only results in a subsequent review following the utility's next IRP instead. Similarly, the process has no value if PacifiCorp attempts to make its 2017 IRP irrelevant for setting avoided cost rates by proposing that its next post-2017 IRP acknowledgement rates be delayed or changed to reflect the outcome of the Company's near simultaneously filed 2017 renewable RFP.

Finally, PacifiCorp suggests that the Joint QF Parties' own actions have delayed this proceeding, and that it is the Joint QF Parties' fault that this proceeding cannot reasonably conclude before its 2017 IRP. The Joint QF Parties agree that the discovery disputes and PacifiCorp's disagreement with the Joint QF Parties' and Staff's views regarding the scope have delayed the process, but PacifiCorp does not tell the whole story. First, the Joint Parties

¹¹ PacifiCorp's Comments at 4 (June 2, 2017)

proposed schedule would allow for a timely completion of this docket. Second, PacifiCorp's argument assumes that PacifiCorp's IRP concludes as scheduled and that its next avoided cost filing is not challenged. This may not occur. Third, PacifiCorp references the various delays in this docket without acknowledging its own actions. For example, PacifiCorp chose to prepare and support its avoided cost filing (stating that it would not be acquiring any new resources) while simultaneously negotiating SB 1547 (and stating that it would be acquiring new resources) and preparing two renewable RFPs to actually acquire new resources. PacifiCorp chose not to seek acknowledgement of its 2015 IRP Update, but proposed to rely upon the analysis regarding its resource sufficiency status from its acknowledged 2015 IRP and rely upon its unacknowledged 2015 IRP Update for other inputs and assumptions. PacifiCorp has repeatedly changed its position throughout this proceeding, often to the surprise and always to the detriment of the QF parties. Underlying all of these actions are PacifiCorp's refusal to admit in this proceeding what it has openly acknowledged in various other non-PURPA proceedings: that it is actively acquiring new renewable resources well in advance of 2028.

B. The 2017 IRP Does Not Provide Adequate Relief to QFs and Ratepayers Harmed by PacifiCorp's Inaccurate Avoided Cost Rates

PacifiCorp maintains that the 2017 IRP and post-IRP acknowledgment are the proper forums to address prospective changes to PacifiCorp's avoided cost rates. This position directly contradicts Order No. 16-307's directive to investigate "the issues raised in this proceeding and possible revisions to Schedule 37 avoided cost prices on a prospective basis."¹² The proper forum to address prospective changes to Schedule 37 is this proceeding.

Looking to PacifiCorp's 2017 IRP merely kicks the can down the road to the next round of proceedings, where PacifiCorp will likely come up with new arguments to maintain very low avoided cost rates in perpetuity. Because that IRP is not contested, these issues will not be "ripe" again until that IRP has concluded, and PacifiCorp makes another post-IRP avoided cost update filing. The Joint QF Parties and the Commission should not be surprised if PacifiCorp comes up with new and creative proposals for why its PURPA rates should assume a longer resource deficiency date than its actual plans. For example, because PacifiCorp appears to be poised to acquire up to 1,270 MW of renewable resources rather quickly, by the time PacifiCorp is forced to make another avoided cost rate update, the Company may claim that its resource need has evaporated, and argue for even lower avoided cost rates.

1. The Commission Acts Quickly to Address Utility PURPA Concerns and Should Likewise Act Quickly to Address QF's Concerns

The Commission took prompt action, and crafted an imperfect solution to address PacifiCorp's concerns that its prices were "stale" and therefore inaccurate.¹³ The Commissioners stated that a public meeting was not the proper forum to determine sufficiency/deficiency demarcation, because the issue is so factually intensive, but set PacifiCorp's sufficiency periods

¹³ At the August 16, 2016 public meeting, the Commission updated PacifiCorp's avoided cost rates to include a 2028 deficiency date rather than the 2020 date that PacifiCorp had originally agreed to, and the Commission has subsequently updated PacifiCorp's rates twice in response to PacifiCorp's UM 1610 compliance filing and annual update, both of which lowered prices and the price reductions were not opposed by QF parties. Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PacifiCorp's Compliance Filing (July 12, 2016); Re Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PacifiCorp's Compliance Filing (Aug. 22, 2016). As explained in CREA and the Coalition's earlier comments, the Commission normally takes quick and expeditious action to lower avoided cost rates based on far less supported claims that the rates were inaccurate.

anyway due to concerns raised by PacifiCorp that its avoided costs would be too high.¹⁴ The intention of the Commissioners, when setting the 2028 resource sufficiency dates, was to set temporary rates in place while the factual issues were resolved. There is sufficient factual information in the record for the Commission to resolve this issue today, or after a very quick evidentiary proceeding.

The Commission has consistently offered the utilities immediate relief when they claim that prices could be set too high, but acts with far less haste when the opposite situation is presented. As it has when the utilities have claimed rates are too high, the Commission should address the obvious reality that PacifiCorp is in fact planning to acquire renewable resources well in advance of 2028, and take swift action to correct PacifiCorp's avoided cost rates. If the Commission issued an order today, then this expedited proceeding will have taken about sixteen months to complete after PacifiCorp's original March 1, 2016 filing. However, if the Commission opts to take no action, then rates will remain too low for at least two years and all parties will have wasted resources in an incomplete contested case proceeding.

2. The Benefit in Continuing This Investigation Is Obvious: PacifiCorp's Avoided Cost Prices Are Inaccurate and Should Be Updated

Aside from preventing the perverse incentives at issue here, there are other benefits in promptly and accurately setting PacifiCorp's avoided cost rates. Perhaps the most obvious benefit is providing accurate avoided cost rates that allow QFs to help PacifiCorp defer its resource needs. PacifiCorp, on the other hand, characterizes this case as "a stale proceeding that has already been overtaken by PacifiCorp's May 1 update and will soon be rendered moot by

¹⁴ Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible QFs, Docket No. UM 1729(1), Public Meeting at 1:32:16 (Aug. 16, 2016).

PacifiCorp's post-IRP acknowledgement update.”¹⁵ PacifiCorp argues that the most efficient use of the parties' resources is to close the proceeding, but efficiency is not the issue here, it is fairness and compliance with the Commission's directive to address the merits of PacifiCorp's rates.

The Commission should ensure that its QF policies apply to all three utilities and not just those that choose to follow them. PacifiCorp's current avoided cost rates are substantially lower than those of Portland General Electric (“PGE”), yet both companies issued RFPs last year and are working on issuing new RFPs this year. The only difference is that PGE's avoided cost rates better reflect PGE's actual resource need, whereas PacifiCorp's do not. This puts ratepayers at risk, because it forecloses the opportunity for QFs to sell power at PacifiCorp's actual avoided cost rate and defer that utility's actual resource acquisitions, allows PacifiCorp to stifle QF competition, unnecessarily ties up important regional transmission and wastes resources as QFs attempt to wheel their power to PGE rather than sell it to PacifiCorp, and ultimately supports PacifiCorp's acquisition of projects that may be more expensive and risky to ratepayers than the very QF sales that PacifiCorp is thwarting.

IV. CONCLUSION

This proceeding could result in new avoided costs for a meaningful time and should be continued, because PacifiCorp's current avoided cost rates are inaccurate. Thus, the Commission should not close the proceeding without either immediately setting PacifiCorp's renewable deficiency date to 2020 or adopting the schedule proposed by the Joint QF Parties.

¹⁵ PacifiCorp's Comments at 5.

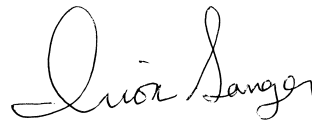
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