

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of Rocky Mountain Power’s ) DOCKET NO. 14-035-55  
Schedule No. 37, Avoided Cost Purchases )  
from Qualifying Facilities )  
)  
) DOCKET NO. 14-035-T04  
In the Matter of Rocky Mountain Power’s )  
Proposed Revisions to Electric Service )  
Schedule No. 37, Avoided Cost Purchases ) ORDER ALTERING ORDER ON REVIEW  
from Qualifying Facilities )  
)  
)  
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ISSUED: February 13, 2015

**SYNOPSIS**

The Commission alters the Order on Review issued in this docket on December 30, 2014, by rescinding the decision to allow the option for a qualifying facility to be paid a separate rate for its capacity and energy.

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**BACKGROUND AND PROCEDURAL HISTORY**

**I. PacifiCorp’s Request to Revise Schedule 37 – October Order**

On May 7, 2014, PacifiCorp, dba Rocky Mountain Power (“PacifiCorp”), filed Advice No. 14-04, proposing revisions to Electric Service Schedule No. 37 (“Schedule 37”), Avoided Cost Purchases From Qualifying Facilities (“PacifiCorp’s Request to Revise Schedule 37”). PacifiCorp’s revisions included the following changes to the method for calculating Schedule 37 rates: (1) include integration costs for wind and solar QFs; (2) reduce solar avoided capacity costs by the resource’s capacity contribution; (3) eliminate the option for a QF to be paid a separate rate for its capacity and energy; (4) exclude the capacity costs based on a simple cycle combustion turbine (“SCCT”) during the period in which PacifiCorp has sufficient resources to

meet its energy requirements; and (5) remove the assumed future taxes on carbon dioxide (“CO2”) from the official forward price curve (“OFPC”) used in the avoided cost calculation.

After a technical conference, rounds of testimony, discovery, and a hearing, the Commission issued its Report and Order on October 21, 2014, approving Schedule 37 rates as filed in PacifiCorp’s Request to Revise Schedule 37, including the previously listed changes to the method for calculating Schedule 37 rates proposed by PacifiCorp (“October Order”).

## **II. Request to Review October Order – December Order**

On November 20, 2014, Utah Clean Energy (“UCE”), SunEdison, LLC (“SunEdison”) and Sustainable Power Group, LLC (“sPower”) jointly filed a request with the Commission for agency review, reconsideration or rehearing of the October Order (“Request to Review October Order”). Specifically, these parties requested review, reconsideration, or rehearing of the decisions in the October Order to: (1) include integration costs for wind and solar QFs; (2) eliminate the option for a QF to be paid a separate rate for its capacity and energy; (3) exclude the capacity costs based on an SCCT during the period in which PacifiCorp has sufficient resources to meet its energy requirements; and (4) remove the assumed future taxes on CO2 from the OFPC used in the avoided cost calculation.

On December 5, 2014, PacifiCorp and the Division of Public Utilities (“Division”) filed responses to the Request to Review October Order. On December 10, 2014, the Commission issued an Order Granting Review of the October Order. The Commission thereafter issued an Order on Review on December 30, 2014 (“December Order”), modifying its decisions in the October Order regarding: (1) elimination of the capacity and energy payment option; and (2)

removal of the SCCT capacity cost component during the period of energy resource sufficiency.

The December Order did not alter any of the other decisions reached in the October Order.

In the findings and conclusions section of the December Order addressing the modification of our earlier decision in the October Order to eliminate the capacity and energy payment option we stated:

Our decision [in the October Order] to eliminate the capacity and energy rates payment option rested on the expert testimony of PacifiCorp, the Division and the Office. These parties argued the two different payment methods currently produce substantially different avoided costs and the capacity and energy payment option overstates avoided costs and therefore contravenes PURPA's ratepayer indifference standard.

The Petitioners essentially agree this is true unless the capacity payments are adjusted to reflect the capacity contribution of intermittent resources. The Petitioners argue this adjustment is achieved by the Commission's October Order approving capacity contribution factors for intermittent resources. Petitioners argue there is no evidence the two payment methods yield different avoided costs once the capacity contribution factors for intermittent resources are applied.

Upon further review of the record, we agree neither PacifiCorp, the Division nor the Office produce evidence showing the capacity and energy payment option, with capacity contribution values applied for intermittent resources, produce materially different payments to Schedule 37 QFs. We recognize that absent an adjustment for the intermittent characteristics of solar resources, as we have approved for wind resources, the two payment options for solar resources could produce materially different prices for QF power. However, our October Order approved solar capacity contribution factors that reduce the capacity payment. Those solar capacity contribution factors should affect the resulting prices.

Further, we recognize the capacity and energy payment option is longstanding precedent. We conclude this payment option should be eliminated only with further review and evidence subsequent to the capacity contribution adjustments of our October Order. Therefore, for the present we will retain the capacity and energy payment

option. We will consider further evidence and argument regarding the two payment options in future Schedule 37 proceedings.<sup>1</sup>

**III. Petition to Review December Order – Notice of Intent to Alter December Order – Order Partially Addressing Petition to Review December Order**

**A. Petition to Review December Order**

On January 9, 2015, PacifiCorp filed a Petition for Reconsideration, Review or Rehearing of the December Order (“Petition to Review December Order”) in Docket Nos. 14-035-T04 and 14-035-55, and a Motion for Expedited Approval of the Capacity Contribution Study and CF Method Values in Docket Nos. 12-035-100 and 14-035-140 (“Motion for Expedited Approval”).<sup>2</sup> Specifically, PacifiCorp requested reconsideration, review or rehearing of both decisions contained in the December Order, *i.e.* the decisions to: (1) reverse the Commission’s earlier decision in the October Order to eliminate the option for a QF to be paid a separate rate for its capacity and energy; and (2) reverse the Commission’s earlier decision in the October Order to exclude the capacity costs based on an SCCT during the period in which PacifiCorp has sufficient resources to meet its energy requirements.

Regarding the Commission’s decision in December to modify its decision from the October Order to eliminate the option for a QF to be paid a separate rate for its capacity and energy, PacifiCorp’s Petition to Review December Order argued the Commission did not consider the evidence presented in the direct testimony of PacifiCorp’s witness Mr. Gregory N.

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<sup>1</sup> December Order at pp. 10-11.

<sup>2</sup> All parties at the status and scheduling conference held on January 21, 2015, in Docket No. 14-035-140 agreed to an expedited schedule for final resolution of all issues raised in PacifiCorp’s Motion for Expedited Approval and all other issues to be addressed in Docket No. 14-035-140. *See In the Matter of the Review of Electric Service Schedule No. 38, Qualifying Facilities Procedures, and Other Related Procedural Issues*, Docket No. 14-035-140 (Scheduling Order and Notices of Technical Conference and Hearing; January 23, 2015).

Duvall. This testimony compares rates paid under the capacity and energy avoided cost payment option and the energy only<sup>3</sup> payment option, assuming PacifiCorp's proposed rates, in which PacifiCorp asserts the Commission's approved capacity contribution values are included. This testimony includes a table that numerically demonstrates the different outcomes using these two options. PacifiCorp reproduced that table in its Petition for Review of December Order.

**B. Notice of Intent to Alter**

On January 16, 2015, the Commission issued a Notice of Intent to Alter Order on Review and Order Staying Portion of Order on Review ("Notice of Intent to Alter"), wherein the Commission recognized it erred in overlooking PacifiCorp witness Duvall's testimony (and in particular Table 1 in his direct testimony), in reaching the findings in the December Order concerning the energy only, and energy and capacity payment options. This table highlights rate differences in the two payment options for base load, wind, and fixed and tracking solar resources, including the application of the Commission's approved capacity contribution values for these resource types. While the rates shown for base load and wind resources are roughly equivalent for each payment option, Mr. Duvall's testimony shows the rate for the capacity and energy payment option for fixed solar resources is approximately 24 percent higher than the rate for the energy only option. Similarly, the rate for tracking solar resources is about 12 percent higher for the capacity and energy payment option.

As noted in the Notice of Intent to Alter, these differences in rates for solar resources call into question our finding in the December Order that no party produced evidence that

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<sup>3</sup> We note the terms "energy only" and "volumetric" pricing are synonymous terms in this order. Schedule 37 utilizes the term "volumetric," however the term is used to describe energy rates not some other measurement.

incorporates our approved capacity contribution values and shows material differences between the energy only, and energy and capacity payment options. Mr. Duvall's testimony demonstrates materially different avoided cost rates for solar resources between the two payment options. Moreover, as noted above, Mr. Duvall asserts his rate comparison table incorporates the capacity contribution values approved in the October Order.

In light of this oversight, the Commission's Notice of Intent to Alter provided notice pursuant to Utah Code Ann. § 54-7-14.5 of its intent to alter the December Order by eliminating the option for a QF to be paid a separate rate for its capacity and energy, consistent with the decision on this topic reached in the October Order, and invited parties to comment on this intention. The Commission further stayed, pending further order, that portion of the December Order that provides for a capacity and energy payment option. The Commission's Notice of Intent to Alter was informed by, but did not grant or otherwise resolve, PacifiCorp's Petition to Review December Order.<sup>4</sup>

**C. Order Partially Addressing Petition to Review December Order**

On January 26, 2015, Salt Lake City Sustainability Division ("Salt Lake City"), separately, and SunEdison and UCE, jointly (jointly referred to as "SunEdison/UCE"), filed

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<sup>4</sup> In response to a procedural question posed by counsel for the Division, the Commission's counsel provided clarification to the parties in the docket on January 22, 2015, that the Commission's Notice of Intent to Alter did not grant rehearing of the December Order or otherwise resolve PacifiCorp's Petition to Review December Order. *See* Docket No. 14-035-T04, *In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities* (Email Correspondence from Jordan White to Patricia Schmid; January 22, 2015).

responses opposing PacifiCorp's Petition to Review December Order.<sup>5</sup> The Division and the Office filed responses<sup>6</sup> in support of PacifiCorp's Petition to Review December Order.

On January 29, 2015, the Commission issued an Order Partially Addressing Rocky Mountain Power's Petition for Reconsideration, Review or Rehearing of the Commission's December 30, 2014, Order on Review and Motion for Stay ("Order Partially Addressing Petition for Review of December Order"). That order addresses only the portion of the Petition for Review of December Order that asks the Commission to modify the portion of the December Order relating to the SCCT capacity cost component during the energy resource sufficiency period. The Commission took no action with respect to the other issues in the Petition for Review of December Order. Additionally, the order did not modify the Notice of Intent to Alter, including the stay of the capacity and energy payment option. Therefore, the discussion, findings and conclusions below address only the capacity and energy payment option.

### **DISCUSSION, FINDINGS, AND CONCLUSIONS**

Pursuant to the Commission's request included in the Notice of Intent to Alter, the Division, the Office and SunEdison/UCE filed responses to the Notice of Intent to Alter on February 2, 2015.

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<sup>5</sup> Salt Lake City's response was styled as comments and focused primarily on support for maintaining the option for a QF to be paid a separate rate for its capacity and energy.

<sup>6</sup> The Office's response was styled as a reply.

**I. Parties' Positions**

**A. SunEdison/UCE**

SunEdison/UCE's comments of February 2, 2015, on the Notice of Intent to Alter request the Commission consider their response to PacifiCorp's Petition to Review December Order filed on January 26, 2015, as responsive to the Commission's invitation to comment on the Notice of Intent to Alter, and to incorporate the January 26, 2015, comments by reference.

SunEdison/UCE asserts that PacifiCorp's Petition to Review December Order does nothing to rectify the fact that the record in Docket No. 14-035-T04 is insufficient to support eliminating the capacity and energy payment method. SunEdison/UCE provides the following excerpt from PacifiCorp's Motion to Review December Order:

The Commission's finding ignores evidence presented in the direct testimony of Company witness Gregory N. Duvall. Mr. Duvall explained that, even after accounting for the capacity contribution of intermittent resources, continuing with the capacity and energy payment option violates the ratepayer indifference standard and will discriminate between two similarly situated QFs:

Under the current Schedule 37 the two pricing options offered do not produce the same total payments to an individual QF. Furthermore, the separate capacity and energy payment structure may result in payments to low-capacity factor resources, such as wind and solar QFs that are inconsistent with the Company's ability to avoid capacity costs.

This is further supported by Table 2 (Table 1 to Mr. Duvall's direct testimony), which is reproduced below. This table shows the avoided cost rates reflecting all of the changes proposed by the Company to Schedule 37, including applying the Commission approved capacity contribution percentages for wind and solar resources, applied to both the capacity and energy payment option as well as the volumetric pricing option. The table was designed to



show the difference between the two rate design options after all other changes and updates were made.<sup>7</sup>

SunEdison/UCE asserts that most of the information and claims included in the excerpt above is new information, which parties did not infer (and could not reasonably have inferred) from Mr. Duvall's actual testimony as filed. SunEdison/UCE states for example, the Petition to Review December Order is the first time PacifiCorp claimed that "Mr. Duvall's table was 'designed to show the difference between the two rate design options after all other changes and updates were made.' Likewise, it is the first time the Company explained that the table allegedly accounts for the capacity *contribution* of renewable resources, rather than just capacity *factors*."<sup>8</sup>

SunEdison/UCE also asserts that although different payment options produce different QF payments, the record in Docket No. 14-035-T04 lacks evidence showing that the capacity and energy option produces unreasonable results. SunEdison/UCE states it has never represented or intended to suggest that the capacity and energy option would produce the same prices as an energy-only option for any given QF project and the mere fact that one payment option is different than another does not necessarily make one more reflective of avoided costs.

SunEdison/UCE responds to claims by other parties that having payment options that result in different prices violates ratepayer indifference. According to SunEdison/UCE, whether the capacity and energy payment option generates a different price from the energy only option is immaterial to PURPA's ratepayer indifference standard. SunEdison/UCE further asserts that ratepayer indifference, while an important consideration, is by no means the single requirement

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<sup>7</sup> January 26, 2015, Response of SunEdison/UCE to Petition to Review December Order at p. 4, *citing* Petition to Review December Order at pp. 7-8 (citations and footnotes omitted).

<sup>8</sup> January 26, 2015, Response of SunEdison/UCE to Petition to Review December Order at p. 8 (emphasis in original).

(nor even the most important component) of the Public Utility Regulatory Policy Act of 1978 (“PURPA”) or Utah law implementing PURPA (Utah Code Ann. § 54-12-1, *et seq.* or “Utah PURPA.”). SunEdison/UCE states:

The mandates of the statutes are diverse, and can even appear at odds with each other, depending on one’s perspective. In addition to removing barriers and encouraging QF development, rates must be just and reasonable to customers, in the public interest and non-discriminatory to QFs. Importantly, while nothing *requires* paying more than avoided costs, the statutes and regulations do not clearly prohibit it either.

The Responding Parties are not asking that QF rates be set at higher than avoided cost rates. However, it is inappropriate to elevate the ‘ratepayer indifference’ standard above all other considerations, including the express mandates of PURPA and Utah law implementing PURPA. As this Commission and participating parties have learned over the years, projecting avoided costs out for 20 years is a very complicated and imprecise art.<sup>9</sup>

## **B. Division**

The Division’s comments summarize earlier testimony and comments provided in this docket favoring the elimination of the capacity and energy payment. The Division refers to its January 26, 2015 response to PacifiCorp’s Petition to Review December Order asserting that retaining two methods that can produce results that differ at all will result in two different avoided costs for the same energy. The Division cites Federal Energy Regulatory Commission (“FERC”) case law interpreting Section 210(b) of PURPA as requiring utility purchases from QFs to be at rates that are not in excess of the incremental cost to the electric utility of alternative

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<sup>9</sup> January 26, 2015, Response of SunEdison/UCE to PacifiCorp’s Petition to Review December Order at pp. 11-12 (emphasis in the original).

energy.<sup>10</sup> The Division further notes that “Section 210(d) of PURPA, in turn, defines ‘incremental cost of alternative electric energy’ as ‘the cost to the electric utility of the electric energy which, but for the purchase from [the QF], such utility would generate or purchase from another source.’”<sup>11</sup> The Division asserts the intent of these provisions is to ensure that ratepayers are financially indifferent as to whether the electricity is purchased from the QF or another source. According to the Division:

Retaining the capacity and energy payment option does not satisfy the ratepayer indifference standard for avoided costs if the outcomes are different. For the same project a QF will deliver the same energy output under either option. A customer cannot, by definition, be indifferent to two different prices for the same energy. Even if the two results are sufficiently close that they are not deemed to be *materially* different the rate payer is not indifferent as between them. The ratepayer can only be financially indifferent when the payments are valued equal to what the company avoids by receiving the energy.<sup>12</sup>

The Division asserts the capacity and energy payment option does not result in similar pricing. In support of this assertion, the Division refers to the direct testimony of PacifiCorp witness Duvall, referenced above, that demonstrates different prices result from applying the energy and capacity payment method instead of the energy only pricing method.<sup>13</sup> The Division notes that Mr. Duvall’s testimony indicates that for base load, the difference in price per

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<sup>10</sup> February 2, 2015, Division Comments on Notice of Intent to Alter at p. 2, citing *California Pub. Utilities Comm’n S. California Edison Co. Pac. Gas & Elec. Co. San Diego Gas & Elec. Co.*, 133 FERC ¶ 61059, 61265 (October 21, 2010).

<sup>11</sup> *Id.*

<sup>12</sup> February 2, 2015, Division Comments on Notice of Intent to Alter at pp. 2-3 (emphasis in the original).

<sup>13</sup> February 2, 2015, Division Comments on Notice of Intent to Alter at pp. 3-4, citing *In the Matter of Rocky Mountain Power’s Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities*, Docket No. 14-035-T04 (Duvall Direct Testimony; July 11, 2014 Table 1, p. 16).

megawatt hour (“MWh”) ranged from a low of \$45.46 (energy) to \$45.90 (energy and capacity) to, for fixed solar, \$43.77 (energy) to \$54.39 (energy and capacity).<sup>14</sup> The Division states these differences become greater when avoided costs are calculated in accordance with the December Order.<sup>15</sup> The Division points to Table 3 of PacifiCorp’s Petition to Review December Order that shows a difference in rates as great as \$26 per MWh between the capacity and energy payment option and the energy only payment option. Because of this difference, according to the Division, ratepayers will not be indifferent as between the two options.

The Division further asserts that even if the capacity and energy payment option were to hypothetically produce the same results, the option should be eliminated. According to the Division, there is no benefit to QFs under this hypothetical as they will receive the same payment and the retention of the capacity and energy payment option serves only to increase the complexity of the Schedule 37 tariff and may lead to confusion by potential QFs who are not familiar with Schedule 37.

In response to SunEdison/UCE’s assertion that ratepayer indifference is only one of a group of goals of PURPA and not a requirement, the Division states that “[w]hile there may be many goals associated with PURPA’s ‘must buy’ requirement for QF energy, incremental cost based pricing is not a goal. It is a mandate. FERC is clear that rates purchases [sic] must be at rates that do not exceed avoided costs. It is not flexible and cannot simply be ignored.”<sup>16</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> See Docket No. 14-035-T04, Division Comments on Notice of Intent to Alter at p. 4, citing *In the Matter of Rocky Mountain Power’s Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities*, Docket No. 14-035-T04 (Tariff Sheets, Exhibit A through Exhibit II, filed with the Company’s Petition; January 9, 2015).

<sup>16</sup> Docket No. 14-035-T04, Division Comments on Notice of Intent to Alter at p. 3, citing *California Pub. Utilities Comm’n S. California Edison Co. Pac. Gas & Elec. Co. San Diego Gas & Elec. Co.*, 133 FERC at ¶ 61265.

**C. Office**

The Office also supports alteration of the December Order by eliminating the option for a QF to be paid a separate rate for its capacity and energy. In support of its position, the Office asserts PacifiCorp provided sufficient evidence in the above-referenced testimony of Mr. Duvall that the capacity and energy payment option produces materially different payments for identically situated QFs in violation of PURPA's ratepayer indifference requirement. Specifically, the Office points to Mr. Duvall's analysis comparing the results of the capacity and energy payment option and energy only pricing using Commission ordered interim capacity contribution values for the intermittent resources (summarized in Table 1 of Mr. Duvall's direct testimony). The Office states it is clear from Table 1 that there is a material difference in the amount paid to a QF depending on which method is employed.<sup>17</sup>

The Office contests SunEdison/UCE's claims that the information from Table 1 of Mr. Duvall's testimony, showing that the two methods are materially different when including the capacity contribution values for solar (68 percent for fixed and 84 percent for tracking), is new evidence and that SunEdison/UCE could not infer that these \$ per MWh prices include the effect of capacity contribution values. The Office cites Mr. Duvall's direct testimony, referencing Table 1, that states: "The table below compares the Company's proposed rates on a \$/MWh basis for various QF types under the capacity and energy payment structure versus a volumetric rate design." On lines 29 to 45 of his direct testimony, Mr. Duvall summarized the specific changes

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<sup>17</sup> Specifically, the Office notes that QF payments for fixed solar vary between \$54.39 per MWh using the capacity and energy method and \$43.77 per MWh using volumetric pricing for a difference of \$10.62 per MWh. Likewise tracking solar yields \$51.51 per MWh for the capacity and energy method and \$45.81 per MWh using energy only pricing for a difference of \$5.70 per MWh between the two. *See* February 2, 2015, Comments of Office on Notice of Intent to Alter at p. 2.

included in PacifiCorp's proposed rates, stating "[a]voided capacity costs should be adjusted for the capacity contribution of intermittent QF resources." The Office argues it is clear that the proposed rates provided in Table 1 by Mr. Duvall would include the effect of the capacity contribution values which have been set by the Commission and currently are 68 percent and 84 percent for solar resources. Further, the Office notes any lack of clarity regarding Mr. Duvall's testimony on this issue was readily discoverable. The Office references a data response to Sun Edison and First Wind in which PacifiCorp provided the workpapers for Table 1 of Mr. Duvall's direct testimony.<sup>18</sup>

## **II. Findings and Conclusions**

As stated in our Notice of Intent to Alter, the Commission recognizes it erred in overlooking Mr. Duvall's direct testimony (and in particular Table 1) in reaching the findings in the December Order concerning the energy only, and energy and capacity payment options. Specifically, Mr. Duvall's testimony compares rates paid under the capacity and energy avoided cost payment option and the energy only payment option, assuming PacifiCorp's proposed rates. Mr. Duvall's testimony includes a table that numerically demonstrates the different outcomes using these two options. This table highlights rate differences in the two payment options for base load, wind, and fixed and tracking solar resources, including the application of the Commission's approved capacity contribution values for these resource types.

While the rates shown for base load and wind resources are roughly equivalent for each payment option, Mr. Duvall's testimony shows the rate for the capacity and energy payment

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<sup>18</sup> The Commission notes that the data request responses referred to by the Office were never submitted for receipt into evidence in this docket.

option for fixed solar resources is approximately 24 percent higher than the rate for the energy only option. Similarly, the rate for tracking solar resources is about 12 percent higher for the capacity and energy payment option. These differences in rates for solar resources call into question our finding in the December Order that no party produced evidence that incorporates our approved capacity contribution values and shows material differences between the energy only, and energy and capacity payment options. Mr. Duvall's testimony demonstrates materially different avoided cost rates for solar resources between the two payment options. Moreover, his rate comparison table incorporates the capacity contribution values approved in the October Order.<sup>19</sup>

We acknowledge that evidence of different pricing outcomes does not alone demonstrate which payment option is superior, *i.e.* which option most closely reflects PacifiCorp's avoided costs. However, in this case, for the reasons discussed below, we question the reliability of the capacity and energy payment option to accurately reflect avoided costs as compared to the energy only payment option.

Mr. Duvall's direct testimony describes the method for apportioning capacity cost to on-peak hours for the purposes of developing the energy only rates. As Mr. Duvall testifies, this approach is consistent with prior practice that was specifically approved in Docket No. 09-035-T14.<sup>20</sup> This approach spreads the avoidable capacity cost to the on-peak hours using the capacity factor of the avoidable proxy resource as represented in PacifiCorp's Integrated Resource Plan.

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<sup>19</sup> This conclusion is based on the record evidence in this docket.

<sup>20</sup> See *In the Matter of the Advice Filing No. 09-12 – Annual Update for Schedule 37 Avoided Cost Purchases From Qualifying Facilities (QF)*, Docket No. 09-035-T14, (Report and Order Approving Rates with Modifications; December 14, 2009).

Thus, Mr. Duvall argues that under the energy only payment option, a QF will be paid the total capacity dollars only when it generates an equivalent amount of energy to the avoidable proxy resource during on-peak hours.<sup>21</sup>

We observe from Table 1 of Mr. Duvall's direct testimony that for a base load QF (a QF that may have similar energy output characteristics as the avoidable proxy resource), the two payment options produce similar prices for the QF's output. However, for the intermittent resources, and especially for the solar technologies, the average price paid for the same QF output under each payment option is materially different. Notwithstanding this material difference, the act of selecting a payment option does not cause different resources to be avoided, therefore we conclude one of the payment options is producing incorrect results. The capacity and energy payment option is heavily disputed in this docket relative to the formulation of the energy only payment option. Further, the evidence in this record describing how avoidable capacity costs are spread to on-peak energy rates in the formulation of the energy only payment option is not specifically contested and is consistent with the method approved by the Commission following consideration in 2009 in Docket No. 09-035-T14.<sup>22</sup> Based on the evidence presented in this record, we are confident the energy only payment option reasonably reflects avoided capacity and energy costs. Therefore, we eliminate the capacity and energy payment option for Schedule 37 rates.

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<sup>21</sup> Currently a combined cycle combustion turbine.

<sup>22</sup> See *In the Matter of the Advice Filing No. 09-12 – Annual Update for Schedule 37 Avoided Cost Purchases From Qualifying Facilities (QF)*, Docket No. 09-035-T14, (Report and Order Approving Rates with Modifications; December 14, 2009).



Significantly, we note our decision to alter the December Order is based on evidence received prior to the closure of the record in this docket on September 16, 2014. We recognize that our Notice of Intent to Alter was informed by PacifiCorp's Petition to Review December Order that called attention to evidence in the record that was overlooked in reaching our findings in the December Order. We reject, however, SunEdison/UCE's assertion that the information provided by PacifiCorp was new evidence. Rather, we agree with the Office that the information from Table 1 (reproduced in the Petition to Review December Order), when read in context of other portions of Mr. Duvall's testimony, clearly demonstrates that the two methods result in materially different pricing and that this different pricing includes the capacity contribution values for solar. This is not new evidence.

Additionally, our decision to alter the December Order by eliminating the capacity and energy option is driven by our mandates under PURPA that rates paid by electric utilities such as PacifiCorp to QFs cannot exceed the incremental cost the utility would otherwise pay for the power also known as the "avoided cost." The intent of this mandate is to assure that PacifiCorp's ratepayers are held harmless, or remain indifferent, as to the source of generation PacifiCorp utilizes to provide retail electric service. In light of this directive, we disagree with SunEdison/UCE's assertion that the Commission should not improperly elevate ratepayer indifference above other mandates contained in PURPA and the Utah PURPA. Specifically, we address SunEdison/UCE's statement that ". . . while nothing *requires* paying more than avoided costs, the statutes and regulations do not clearly prohibit it either."<sup>23</sup>

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<sup>23</sup> January 26, 2015, response of Sun/Edison UCE to Petition to Review December Order at p. 12. (emphasis in original).

The absolute requirement of utilities to purchase energy from QFs is tempered by Congress's command that rates paid for such energy "be just and reasonable to the electric consumers of the electric utility and in the public interest."<sup>24</sup> PURPA further provides that "[n]o such rule prescribed under subsection (a) [of this section] shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy."<sup>25</sup> Accordingly, rates paid by electric utilities to QFs may not exceed the incremental cost the utility would pay for conventional energy, also known as the "avoided cost."<sup>26</sup>

Recognizing the current procedural posture of this docket, we desire to provide clarity to parties on the status of Schedule 37 pricing. With this order, the Order Partially Addressing Petition for Review of December Order, the December Order, and the October Order, the following changes proposed by PacifiCorp in Advice No. 14-04 to the method for calculating Schedule 37 rates are in effect: (1) include integration costs for wind and solar QFs; (2) reduce solar avoided capacity costs by the resource's capacity contribution; (3) eliminate the option for a QF to be paid a separate rate for its capacity and energy; and, (4) remove the assumed future taxes on CO<sub>2</sub> from the OFPC used in the avoided cost calculation.

Pursuant to the Commission's directive in the Order Partially Addressing Petition for Review of December Order, on January 23, 2015, PacifiCorp filed revised Schedule 37 tariffs

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<sup>24</sup> 16 U.S.C. § 824a-3(b)(1).

<sup>25</sup> 16 U.S.C. § 824a-3(b)(2).

<sup>26</sup> *See id.* § 824a-3(d) (defining "incremental cost of alternative electric energy" as "the cost to the electric utility of the electric energy which, but for the purchase from such [QF], such utility would generate or purchase from another source."). *See also* FERC regulations implementing PURPA at 18 C.F.R. §§ 292.101(b)(6) and 292.304(a)(2) requiring that QF pricing not exceed avoided cost ("Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases.").

and rates consistent with the order of partial stay of the energy and capacity option. These tariff sheets are filed in the section “Documents Reflecting the January 16, 2015 Order.” These documents also include the associated quantitative worksheets and narrative description supporting these tariff sheets. Given our order today, these tariff sheets are proposed to implement our final determination and agency action in this docket. All other issues proposed by any party at any point in this proceeding have been considered in making this final determination. Parties are free, however, to propose or address issues in future dockets updating Schedule 37 pricing.

**ORDER**

1. We rescind our decision from the December Order to approve the capacity and energy payment option, and we discontinue that payment option.
2. We direct the Division to review the Schedule 37 tariff sheets filed by PacifiCorp in this docket on January 23, 2015, titled “Documents Reflecting the January 16, 2015 Order” for compliance with the orders issued in this docket<sup>27</sup> and file its recommendations on the compliance of the tariff sheets within seven days of this order.

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<sup>27</sup> Potential future consideration of capacity costs based on an SCCT during the period in which PacifiCorp has sufficient resources to meet its energy requirements, to which we alluded in our Order Partially Addressing Petition for Review of December Order, may occur in connection with PacifiCorp’s next Schedule 37 update, and therefore is not relevant to approval of these tariff sheets. Similarly, the tariff sheets filed on January 23 in the section “Documents Reflecting the October Order with Shaped On- and Off- Peak Prices During Sufficiency Period” have not been substantively evaluated in this docket and may be considered in connection with PacifiCorp’s next Schedule 37 update.

DOCKET NOS. 14-035-55 AND 14-035-T04

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DATED at Salt Lake City, Utah, this 13<sup>th</sup> day of February, 2015.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#263708

Notice of Opportunity for Review

This Order constitutes final agency action. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action.

CERTIFICATE OF SERVICE

I CERTIFY that on the 13<sup>th</sup> day of February, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

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Administrative Assistant