

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1396  
Phase II

In the Matter of:

PUBLIC UTILITY COMMISSION OF  
OREGON Investigation into determination  
of resource sufficiency, pursuant to Order  
No. 06-538

OPENING COMMENTS

Pursuant to Public Utility Commission of Oregon (Commission) Order No. 10-488 and the Prehearing Conference Memorandum issued by Administrative Law Judge (ALJ) Patrick Power in this proceeding on January 21, 2011, PacifiCorp d/b/a Pacific Power (the Company) respectfully submits these Opening Comments.

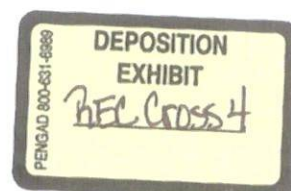
**I. BACKGROUND**

**A. Procedural Background**

The Commission opened this proceeding to establish a methodology for determining resource sufficiency for purposes of calculating avoided cost payments to qualifying facilities (QFs), consistent with Commission policy and the Public Utility Regulatory Policies Act (PURPA).

<sup>1</sup> In the first stage of this proceeding, Commission Staff (Staff), PacifiCorp, Portland General Electric Company (PGE), and the Industrial Customers of Northwest Utilities (ICNU) filed testimony on the determination of resource sufficiency. These parties also filed opening briefs, along with Idaho Power Company (Idaho Power), and the Community Renewable Energy Association (CREA). PGE, PacifiCorp, and ICNU filed reply briefs.

<sup>1</sup> See *Re Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket UM 1129, Order No. 06-538 at 54 (Sept. 20, 2006).



1           On September 29, 2009, ALJ Power issued a Ruling reopening this matter to receive  
2   comments on a proposed Decision Outline that described a new avoided cost framework.  
3   Staff, PacifiCorp and Idaho Power jointly, PGE, ICNU, Biomass One, and Renewable  
4   Energy Coalition filed initial comments; PacifiCorp and Idaho Power jointly, PGE, ICNU,  
5   Renewable Energy Coalition, and CREA filed reply comments.

6           On January 6, 2010, ALJ Power issued a Ruling reopening the matter again to take  
7   comment on a modified avoided cost framework. Comments on the new framework were  
8   filed by Staff; ICNU; Renewable Energy Coalition; the Energy Trust of Oregon; and  
9   PacifiCorp, PGE, and Idaho Power jointly.

10          On December 22, 2010, the Commission issued Order No. 10-488, resolving some  
11   issues addressed in comments in the first phase of this docket and requesting comments on  
12   additional issues in a new phase of the docket. In that order, the Commission found that:

- 13          •     The Integrated Resource Planning (IRP) process is the appropriate venue for  
14                 addressing resource sufficiency;
- 15          •     Where the utility's acknowledged IRP shows a range of on-line years for a  
16                 major resource, the earliest date in the range will set the date for resource  
17                 deficiency;
- 18          •     Where the IRP and IRP action plan are partially acknowledged, the resource  
19                 sufficiency/deficiency demarcation will be made on a case-by-case basis;
- 20          •     The 100 MW standard for major resources remains unchanged; and
- 21          •     The current practice of updating avoided costs will remain unchanged, with  
22                 utilities filing their avoided costs every two years and 30 days after an IRP

1                   order is issued, or for a “significant change.”<sup>2</sup>

2                   The Commission also outlined issues to be addressed in Phase II of this proceeding.<sup>3</sup>

3       **B.     PURPA and Relevant FERC Precedent**

4                   PURPA requires, among other things, that electric utilities purchase energy from QFs  
5     at rates that are just and reasonable to the utility’s customers, in the public interest, do not  
6     discriminate against QFs, and are not more than the “incremental cost of alternative electric  
7     energy,” or avoided cost. 16 U.S.C. § 824a-3(b), (d). The Commission noted in Order No.  
8     10-488 that this docket has been conducted against the backdrop of Federal Energy  
9     Regulatory Commission (FERC) proceedings in which FERC clarified the status of  
10    renewable resource development in the derivation of avoided costs.<sup>4</sup> In that proceeding, the  
11    California Public Utilities Commission (CPUC) requested that FERC find that the Federal  
12    Power Act, PURPA, and FERC regulations do not preempt the CPUC’s ability to require  
13    California utilities to offer a certain price to combined heat and power generating facilities of  
14    20MW or less that meet energy efficiency and environmental standards.<sup>5</sup>

15                  In its order, FERC found that “the concept of a multi-tiered rate structure can be  
16    consistent with the avoided cost rate requirements set forth in PURPA.”<sup>6</sup> In the case of a  
17    multi-tiered rate structure, the issue will be what costs the utility is avoiding.<sup>7</sup> In determining  
18    the avoided cost rate, the state may “take into account obligations imposed by the state that,  
19    for example, utilities purchase energy from particular sources of energy or for a long

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<sup>2</sup> Order No. 10-488 at 8.

<sup>3</sup> Order No. 10-488 at 9.

<sup>4</sup> Order No. 10-488 at 9.

<sup>5</sup> *Cal. Pub. Util. Comm’n*, Order Granting Clarification and Dismissing Rehearing, Docket No. EL 10-64-001, 133 FERC ¶ 61,059 at ¶ 5 (Oct. 21, 2010) [hereinafter “Order Granting Clarification”].

<sup>6</sup> *Id.* at ¶ 26.

<sup>7</sup> *Id.* at ¶ 26.

1 duration.”<sup>8</sup> FERC likened the issue to a state requiring that utilities must scrub pollutants  
2 from coal plant emissions.<sup>9</sup> Under that scenario, the avoided cost rate would reflect such a  
3 requirement; similarly, the avoided cost rate may reflect a state requirement that utilities  
4 purchase their energy needs from renewable resources.<sup>10</sup> FERC clarified that the avoided  
5 cost rate may not include a “bonus” or “addor” above avoided cost to provide compensation  
6 for environmental externalities, although such costs can be included if they are real costs that  
7 would be incurred by the utility.<sup>11</sup>

## 8 II. DISCUSSION

### 9 Substantive Issues

10 A. **Should the Commission require that each utility determine its avoided cost for a**  
11 **renewable resource? If so, how should the Commission decide what renewable**  
12 **resource would be avoided and at what cost?**

13 The Company supports development of a separate avoided cost for renewable  
14 resources and believes it should be based on using the next deferrable renewable resource  
15 from the Company’s IRP. Two major changes have occurred on the resource front since the  
16 Commission established the methodology for calculating avoided cost that lend support to  
17 this approach. First, PacifiCorp, through its IRP, has documented its intention to acquire,  
18 outside of PURPA, substantial amounts of power generated by renewable resources,  
19 principally from intermittent wind generation. Second, three states in which PacifiCorp  
20 operates—Oregon, Washington, and California—have implemented mandatory renewable  
21 portfolio standards (RPS), a fourth—Utah—has established a similar renewable energy

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<sup>8</sup> *Id.* at ¶ 26.

<sup>9</sup> *Cal. Pub. Util. Comm’n*, Order Denying Rehearing, Docket No. EL 10-64-001, 134  
FERC ¶ 61,044, ¶ 30 (Jan. 20, 2011).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at ¶ 31.



1 standard (RES), and stakeholders have evaluated implementing a federal RPS guideline. In  
2 addition, as referenced in the FERC order cited by the Commission in Order No. 10-488,  
3 FERC has clarified that the Commission can establish a separate avoided cost for QFs that  
4 provide qualifying electricity under an RPS. Based on these developments, PacifiCorp  
5 agrees with the Commission's implied finding that in establishing avoided cost rates, the  
6 Commission should consider renewable QF resources separately from other QF resources,  
7 consistent with PURPA and FERC precedent.

8 **1. Should the IRP Action Plan be used to identify when a renewable resource**  
9 **acquisition would be avoided, or should a utility purchase of unbundled**  
10 **renewable energy credits signal the start of a renewable resource deficiency**  
11 **period?**

12 The IRP preferred portfolio and action plan should be used to identify when a  
13 renewable resource acquisition would be avoided. The Commission has already found that  
14 "the IRP process is the appropriate venue for addressing resource sufficiency/deficiency  
15 issues because the IRP processes are conducted with extensive public review regarding the  
16 timing of the utility's loads and its consequent resource needs."<sup>12</sup> It is therefore appropriate  
17 to use the IRP process as the venue for also addressing renewable resource  
18 sufficiency/deficiency timing.

19 The purchase of unbundled RECs should not signal the start of a renewable resource  
20 deficiency period. First, the issue is not currently relevant for PacifiCorp since the  
21 Company's 2011 IRP shows that the Company plans to add additional renewable resources  
22 on a system basis in 2018, which predates any potential plan by PacifiCorp to consider  
23 systematically purchasing RECs to satisfy Oregon RPS compliance. Second, purchases of  
24 unbundled RECs do not necessarily signal that the Company is in a deficiency period for

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<sup>12</sup> Order No. 10-488 at 9.

1 renewable resources. For example, in a poor wind year, the Company's wind projects may  
2 not deliver expected output and the Company could be required to purchase limited RECs to  
3 fill those short-term gaps. Therefore, purchases of unbundled RECs are akin to spot  
4 purchases of energy, which the Commission has found do not signal that the utility is  
5 resource deficient. Finally, as discussed below, under PURPA the avoided cost cannot  
6 include the cost of unbundled RECs. It would therefore be inconsistent to use the purchase  
7 of unbundled RECs as an indication of renewable resource deficiency timing when  
8 unbundled RECs are not considered in the calculation of avoided cost.

9 It should also be noted that the Company routinely purchases unbundled RECs to  
10 comply with the customer needs under its voluntary renewable energy program, Blue Sky.  
11 Accordingly, the Company's purchase of unbundled RECs may reflect needs under the Blue  
12 Sky program, which is not a state-mandated procurement standard and would not be relevant  
13 to calculating avoided costs under PURPA.

14 **2. Should out-of-state renewable portfolio standards be taken into account when**  
15 **determining when a renewable resource can be avoided by a purchase from an**  
16 **Oregon QF?**

17 The timing of when a renewable resource can be avoided is not impacted by whether  
18 or not out-of-state renewable portfolio standards are taken into account because PacifiCorp's  
19 acquisition of renewable resources are all done on a system basis, driven by cost-  
20 effectiveness and risk mitigation, and are not acquired to meet any individual states RPS  
21 requirements.

- 1   **3.     Should the renewable avoided cost be based on the estimated cost of the**  
2   **renewable resources identified in the IRP Action Plan, or should the**  
3   **Commission use a “proxy” resource approach similar to the current approach**  
4   **used by PGE and PacifiCorp for standard avoided costs?**

5       PacifiCorp recommends that the renewable avoided cost be based on the estimated  
6   cost of the next avoidable renewable resource identified in the IRP preferred portfolio. These  
7   costs should be used to calculate avoided costs at the conclusion of the resource sufficiency  
8   period. A combined cycle combustion turbine (CCCT) resource does not appropriately reflect  
9   the resource characteristics or costs of renewable resources, specifically the intermittent  
10   nature of the majority of renewable resources. A CCCT is therefore not an appropriate proxy  
11   to reflect a new renewable resource.

- 12   **4.     When should the renewable avoided cost stream reflect an avoided purchase of**  
13   **an unbundled renewable energy certificate?**

14       For purposes of setting avoided costs for renewable resources in Oregon, the avoided  
15   cost stream should not reflect the purchase of an unbundled REC for the reasons identified in  
16   the Company’s response to question 1 above. In addition, as discussed above, purchases of  
17   unbundled RECs are not reflective of the next avoided renewable resource, and are therefore  
18   irrelevant to the avoided cost of renewable energy..

19       Moreover, PURPA and FERC precedent prohibit the renewable avoided cost stream  
20   from reflecting an avoided purchase of an unbundled REC. PURPA states that the rates paid  
21   to QFs cannot exceed “the incremental cost to the electric utility of alternative electric  
22   energy.”<sup>13</sup> FERC regulation sets forth the factors that are to be considered in determining  
23   avoided costs: (1) the utility’s system cost data; (2) the availability of capacity or energy  
24   from a QF during peak periods; (3) the relationship of the availability of energy or capacity

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<sup>13</sup> 16 U.S.C. 824a-3(b).

1 from the QF to the ability of the electric utility to avoid costs; and (4) the costs or savings  
2 resulting from variations in line losses from those that would have existed in the absence of  
3 the QF purchase.<sup>14</sup> FERC noted that these factors do not include the environmental attributes  
4 of the QF, because avoided cost rates “are not intended to compensate a QF for more than  
5 capacity and energy, it follows that other attributes associated with the facilities are separate  
6 from, and may be sold separately from, the capacity and energy.”<sup>15</sup> Therefore, under  
7 PURPA, a utility’s avoided cost cannot reflect the cost of unbundled REC purchases.

8 **B. Should the Commission require that a renewable QF be able to choose among**  
9 **two avoided cost streams – the renewable avoided cost stream, and the non-**  
10 **renewable avoided cost stream?**

11 Yes, subject to two qualifications. First, the Commission’s question as to whether  
12 renewable QFs can choose among two avoided cost streams raises a related issue as to which  
13 renewable QFs should be eligible to receive the renewable avoided cost stream. PacifiCorp  
14 requests that the Commission clarify that only renewable QFs that cede RECs to the utility  
15 are eligible to receive the renewable avoided cost stream. FERC held that if a utility must  
16 purchase energy from certain types of generators, “generators with those characteristics are  
17 the sources that are relevant to the determination of the utility’s avoided cost for that  
18 procurement requirement.”<sup>16</sup> Under FERC’s holding, only QFs that are able to sell to the  
19 utility under the relevant procurement requirement can receive the avoided cost for  
20 generators applicable to that procurement requirement. Because a utility must obtain RECs  
21 to comply with the RPS, a renewable QF selling electricity without RECs is no different to

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<sup>14</sup> 18 C.F.R. § 292.304(e).

<sup>15</sup> *Am. Ref-Fuel Co.*, Docket No. EL03-133-001, Order Denying Rehearing ¶ 16 (Apr. 15, 2004).

<sup>16</sup> Order Granting Clarification at ¶ 29.



1 the utility than a non-renewable QF for purposes of meeting the RPS requirements. The  
2 avoided cost for such QFs should therefore be based on the non-renewable avoided cost.

3 Second, PacifiCorp believes that FERC precedent would prohibit a renewable QF  
4 from choosing a higher avoided cost stream than the stream applicable to renewable  
5 resources. Under the FERC order discussed above, the multi-tiered avoided cost rate can  
6 reflect the costs that the utility is avoiding by purchasing from the renewable QF.<sup>17</sup> If the  
7 renewable avoided stream was lower than the non-renewable stream, allowing the renewable  
8 QF to choose the higher avoided cost stream would result in the QF being paid more than its  
9 avoided cost, contrary to PURPA.

10 **C. When is a planned resource acquisition avoidable?**

11 **1. If no irreversible commitment has been made to the project, is the project**  
12 **avoidable?**

13 Yes.

14 **2. What constitutes an irreversible commitment?**

15 An irreversible commitment is generally when the Company enters into a  
16 binding contract to acquire a resource.

17 **Procedural Issues**

18 **A. Which of these issues should be the subject of evidentiary proceedings?**

19 PacifiCorp believes that the issues raised in Order No. 10-488 are primarily legal and  
20 policy in nature and therefore should not require evidentiary proceedings. However, if the  
21 Commission determines that the avoided cost framework should be modified further,  
22 PacifiCorp may recommend that those new modifications be subject to evidentiary  
23 proceedings.

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<sup>17</sup> Order Granting Clarification at ¶ 29.

1     **B.     Should the evidentiary proceedings be generic, or conducted on a utility-by-**  
2     **utility basis?**

3           Because PacifiCorp is not currently aware of issues that would require evidentiary  
4   proceedings, PacifiCorp has not developed a position on this question. If the parties raise  
5   issues in comments that they propose should be subject to evidentiary proceedings,  
6   PacifiCorp will address this issue in reply comments.

### III. CONCLUSION

8       PacifiCorp recommends that the Commission adopt the recommendations set forth in  
9       these comments, as they are consistent with PURPA and Commission precedent.

DATED: May 13, 2011.

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