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## Via Electronic Mail and FedEx

October 7, 2015


Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
1300 S. Evergreen Park Drive, S.W.  
Olympia, Washington 98504-7250.

Re: Washington Utilities and Transportation Commission v. PacifiCorp, dba Pacific Power &  
Light Co.  
Docket No. UE-144160

Dear Mr. King:

Please find one copy of the Reply Brief of the Renewable Energy Coalition in the above captioned docket. Electronic copies of the Reply Brief will be filed with the records center and served upon the parties in Word and pdf format.

Sincerely,



Irion A. Sanger

cc: Service List (US mail and e-mail)

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served the following RENEWABLE ENERGY COALITION REPLY BRIEF in WUTC Docket No. UE-144160 by regular or electronic mail to the parties on the attached service list.

DATED October 7, 2015



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**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )  
Complainant, )  
v. )  
PACIFICORP D/B/A PACIFIC POWER & )  
LIGHT COMPANY, )  
Respondent. )

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**DOCKET NO. UE-144160**

**REPLY BRIEF OF THE RENEWABLE ENERGY COALITION**

**October 7, 2015**

## I. INTRODUCTION

1. The Renewable Energy Coalition (“REC”) submits this reply brief responding to the initial briefs of the Washington Utilities and Transportation Commission (the “Commission”) Staff, and PacifiCorp, d/b/a Pacific Power (“PacifiCorp”). REC is only filing a limited reply brief because few new issues or arguments were raised in the parties’ initial briefs and REC expects Commission Staff to address the specific challenges to its proposal.
2. REC continues to recommend that the Commission retain a separate kilowatt month capacity payment in Schedule 37 because failing to pay qualifying facilities (“QF”) for the capacity they provide to a utility violates the Public Utility Regulatory Policies Act (“PURPA”). While REC does not agree with Staff that short five-year contract terms benefit QFs, REC supports Staff’s proposed approach to valuing capacity payments for both new and existing QFs. If the Commission does not adopt Staff’s substantive recommendation, then it should adopt REC’s alternative proposal to value capacity based on the annual costs of a peaking resource or the company’s actual coal plant investments. Ultimately, the Commission should ensure that at least existing QFs currently operating in Washington are paid a full capacity payment.
3. In contrast, PacifiCorp fails to demonstrate that its approach is consistent with how it will acquire and retain capacity resources to serve customers, PURPA, or the Federal Energy Regulatory Commission’s (“FERC”) regulations and policies. PacifiCorp is simply attempting effort to destroy what is an already moribund non-utility owned renewable energy market in the company’s Washington service territory.

## II. ARGUMENT

### 1. The Commission Should Not Allow PacifiCorp to Administratively Gut PURPA

4. The Commission should consider the overall context and impact of PacifiCorp's proposal to eliminate capacity payments in this case, which is part of a company wide effort to dismantle PURPA. PacifiCorp's Washington service territory PURPA implementation is the worst in the region, and the company's apparent goal is to ensure that it purchases as little as possible cost effective non-utility owned renewable power. PacifiCorp is attempting to narrowly define the issues in this case to the question of what resources it will acquire during the next five years to distract the Commission from the actual real world impact of its proposal. The Commission needs to consider the practical end result, which would be that QFs are never paid for the capacity value they provide to PacifiCorp regardless of the resources the company will actually acquire.

5. PacifiCorp asserts that it would be improper and violate PURPA for the Commission to consider that its Washington avoided cost rates and contract terms are worse than all other regional investor owned utilities, and the company's other service territories.<sup>1</sup> REC agrees that PacifiCorp's avoided cost rates cannot simply be increased or decreased based on the rates and contract terms for other utilities and states. Despite this, the Commission should question whether it makes sense to adopt PacifiCorp's recommendation when the company's Washington avoided cost rates and/or terms and

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<sup>1</sup> See PacifiCorp Initial Brief ¶¶ 20-21.

conditions are already worse than every other investor owned utility in the Rocky Mountain and Pacific Northwest areas.<sup>2</sup>

6. PacifiCorp is not seeking to protect its ratepayers, but is executing Berkshire Hathaway's plan to administratively destroy PURPA in order to earn a return on the company's own generation resources. When Berkshire Hathaway proposed a bill to eliminate PURPA, Washington Senator Maria Cantwell asked PacifiCorp's owner: "Isn't it the case that obviously getting rid of this PURPA requirement would just greatly benefit the company financially on your profit margin by reducing competition for central station generation?"<sup>3</sup> Senator Cantwell identified the heart of the matter when she stated that: "I just see you making money coming and going on the repeal of the PURPA language."<sup>4</sup> The Commission should not let Berkshire Hathaway accomplish its goals in Washington state that it was unable to obtain in Washington, DC.

## **2. Avoided Cost Rates Cannot Be Based on Only Market Forecasts**

7. PacifiCorp asserts that FERC precedent allows the company to pay QFs based on only forecasts of its firm market purchases.<sup>5</sup> PacifiCorp misreads and ignores FERC's rules and orders, which have concluded that it is illegal to effectively prevent QFs from being compensated for the capacity value they provide to the utility.

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<sup>2</sup> This includes Avista, Puget Sound Energy, Idaho Power, Portland General Electric Company, and PacifiCorp's operations in Oregon, California, Wyoming, Idaho and Utah.

<sup>3</sup> As reported at: <http://www.eenews.net/stories/1060019382>

<sup>4</sup> As reported at: <http://www.utilitydive.com/news/after-senate-showdown-buffetts-berkshire-pushes-purpa-reform-in-house/400081/>

<sup>5</sup> PacifiCorp Initial Brief at ¶¶ 12-13.

8. FERC requires that a QF be paid for both the energy and capacity that they provide to the utility.<sup>6</sup> PacifiCorp selectively cites FERC precedent for the proposition that avoided cost rates can solely be based on market purchases.<sup>7</sup> The decision PacifiCorp cites allows avoided cost rates to be based on market purchases when there are “bona fide offers from another utility.”<sup>8</sup> PacifiCorp instead wants to base avoided cost rates entirely on forward market price estimates. PacifiCorp also ignores the recent FERC precedent reaffirming that the avoided cost rates must include capacity costs when the utility has a demand for capacity.<sup>9</sup> The Commission should not base any order in this proceeding on PacifiCorp’s proposed legal standard that directly contradicts thirty-five years of consistent FERC policy.

### 3. Washington QFs Will Avoid More than Just Market Purchases

9. The facts do not support PacifiCorp’s claims that new and existing QFs will only cause the company to avoid market purchases.<sup>10</sup> The evidence demonstrates that QFs will cause PacifiCorp to avoid expensive capacity resources over both the short and long term. The avoided cost rates paid to QFs must include this capacity because PacifiCorp has a demand that is in excess of whatever small amount capacity that may be embedded in the company’s estimates of firm market purchases.

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<sup>6</sup> REC Initial Brief at ¶¶ 12-13; see also Small Power Prod. and Cogeneration Facilities; Regulations Implementing Sec. 210 of the Pub. Util. Reg. Pol. Act of 1978, Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980) (a QF has the right to “a fixed price contract for its energy and capacity at the outset of its obligation”). (“Order No. 69”).

<sup>7</sup> PacifiCorp Initial Brief at ¶ 13 citing Order No. 69.

<sup>8</sup> Order No. 69 at 12,226.

<sup>9</sup> Hydrodynamics Inc., 146 FERC ¶ 61,193 at P. 35 (March 20, 2014).

<sup>10</sup> REC Initial Brief at ¶¶ 25-38.

10. In the long term, PacifiCorp's integrated resource planning horizon includes expensive capacity resources, including coal plant conversions, investments in its existing coal fleet to retain these resources, and almost 3,000 MWs of new natural gas facilities.<sup>11</sup> Washington QFs must be paid for causing PacifiCorp to avoid these capacity resources because the company plans on QFs selling power during the time in which these investments will be made. PacifiCorp assumes that all small QFs renew their contracts, including the Washington QFs (Yakima Tieton's Orchard and Cowiche two hydro projects, and Deruyter Dairy's 1.2 MW methane facility).<sup>12</sup> The fact that these projects are assumed to renew their contracts and will operate for the long-term means that they should not be considered surplus power, but will instead reduce PacifiCorp's resource needs for the long-term.<sup>13</sup> In other words, PacifiCorp assumes all existing Washington's QFs will operate, sell power to the company, and defer capacity resources that it will acquire over the next two decades.

11. QFs will also avoid more than just market purchases in the short-term. PacifiCorp focuses on its GRID model estimates,<sup>14</sup> which ignore the huge investments to retain its existing capacity resources.<sup>15</sup> The Commission should reject PacifiCorp's assertions that these capacity retaining investments cannot be avoided because Washington QFs are too

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<sup>11</sup> Lowe Declaration at ¶ 21.

<sup>12</sup> See Dickman Rebuttal Declaration at ¶ 10 (citing to PacifiCorp 2015 IRP, Volume 1 at 75).

<sup>13</sup> See Re the Commission's Review of PURPA QF Contract Provisions, IPUC Case No. GNR-E-11-03, Order No. 32697 at 21-22 (Dec. 18, 2012) clarified in Order No. 32871 (Aug. 9, 2013); see also Re Idaho Power Company's Petition to Modify Terms and Conditions of PURPA Purchase Agreements, IPUC Case Nos. IPC-E-15-01, AVU-E-15-01, PAC-E-15-03, Order No. 33357 at 25-26 (Aug. 20, 2015).

<sup>14</sup> PacifiCorp Initial Brief at ¶¶ 9-10, 14.

<sup>15</sup> Lowe Declaration at ¶¶ 21, 31.



small, some of the upgrades are no longer required, or there is no accounting for the benefits of these existing coal resources.<sup>16</sup>

12. REC's initial brief fully addressed PacifiCorp's first two arguments. As explained in the initial brief, under FERC policy, QFs have the right to be paid rates based on actual avoided capacity resources, regardless of their size.<sup>17</sup> If QF resource size determined eligibility for capacity payments, then no small QF would ever be paid for capacity because no single QF can ever displace a huge gas or coal plant. In addition, the company's proposal to eliminate capacity payments relies entirely upon the fact that it estimates in its integrated resource plan ("IRP") that it will enter into front office transactions for more than a decade. It is ironic that the company believes the IRP estimates over ten years out warrant eliminating capacity payments, but that same plan cannot be relied upon to accurately estimate coal plant upgrades that will occur in the next few years.<sup>18</sup> Regardless, even if some of the investments in retaining its coal capacity are not made, PacifiCorp does not claim that none of these investments will be made.

13. PacifiCorp also asserts that compensating QFs based on the company's actual investments in retained capacity ignores the benefits its existing coal fleet provides.<sup>19</sup> This argument applies equally to setting avoided cost rates on any resource. Whether they are firm market purchases, gas plants, or coal plants, all non-QF resources have different operational profiles, costs, and benefits. Regardless, PURPA mandates that the generation that the company would acquire but for the purchase of QF energy and

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<sup>16</sup> See PacifiCorp Initial Brief at ¶¶ 47-51 (PacifiCorp's arguments).

<sup>17</sup> REC Initial Brief at ¶ 33.

<sup>18</sup> REC Initial Brief at ¶¶ 31-32.

<sup>19</sup> PacifiCorp Initial Brief at ¶ 50.

capacity must be the basis for setting avoided cost rates. The logical end result of PacifiCorp's argument is that no resource should ever be used to set avoided cost rates for QFs because they all have other operational benefits.

14. Despite any potential benefits of coal, REC has not proposed that all the costs of future coal regulations be accounted for. While REC's proposal is supported by the risk of future environmental requirements, REC proposes that QFs only be paid for the actual planned investments to comply with current regulations. Given the proposed Environmental Protection Agency rules, it is far more likely that there will be higher rather lower costs associated with the company's coal fleet.

15. PacifiCorp also accuses REC of "procedural sloppiness" in attaching and referring to REC testimony submitted in an Oregon case.<sup>20</sup> Mr. Lowe's declaration fully supports REC's alternative recommendations in this proceeding, and identifies all the retained capacity investments that the company planned to make at the time the declaration was filed.<sup>21</sup> The attached testimony from Kevin Higgins simply provides additional details and background. PacifiCorp responded to all of REC's arguments in its rebuttal declaration, and had ample opportunity to address any alleged procedural deficiencies through a motion or cross examination.

#### **4. Staff's and REC's Recommendations Will Not Fix Avoided Cost Rates Forever**

16. PacifiCorp argues that REC's position that existing QFs should continue to be paid a capacity payment is simply "a thinly veiled attempt at lengthening the availability of fixed avoided cost prices beyond the five years allowed by the Company's Washington

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<sup>20</sup> PacifiCorp Initial Brief at ¶ 47.

<sup>21</sup> Lowe Declaration at ¶¶ 31-32.

tariff.”<sup>22</sup> PacifiCorp mischaracterizes REC’s recommendation in this proceeding, which is that there be no change in the overall manner of paying all QFs. At this time, REC is only recommending that the existing capacity payment be increased to more accurately reflect PacifiCorp’s avoided costs.

17. First, REC’s primary recommendation is that there not be any different treatment for new and existing QFs. The fact that existing QFs provide PacifiCorp with additional unique benefits justifies retaining capacity payments for all QFs. Focusing on the impact on existing QFs is important because, from a practical perspective, there is unlikely to be significant amounts of new Washington QFs given other aspects of Washington’s PURPA implementation. For example, five-year contract terms make financing extremely difficult and there are no Washington standard contracts to limit utility abuse in the negotiation process.

18. Second, the parties have not challenged the reasonableness or legality of five-year contract terms in this case.<sup>23</sup> Under REC’s and Staff’s recommendations, QFs will have the guarantee that they will be paid something for energy and capacity, but QFs can only lock in and obtain fixed prices for a maximum of five years. In other words, a QF’s avoided cost rates will still be updated at least every five years, which means that the actual rates can only be fixed for up to a five-year term. For baseload hydro and biomass QFs, this is shorter than any other state.<sup>24</sup>

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<sup>22</sup> PacifiCorp Initial Brief at ¶ 42.

<sup>23</sup> REC has concerns regarding the legality and appropriateness of five-year PURPA contract terms, but is not raising those arguments in this proceeding. REC reserves the right to raise those arguments in a future proceeding.

<sup>24</sup> The Idaho Public Utilities Commission just lowered the contract term for only wind and solar QFs to two years, but there are currently long term contracts for all other QFs in Idaho, Oregon, California, Wyoming and Utah.

**5. PacifiCorp Does Not Conduct Its Own Analysis of Market Liquidity and Depth**

19. PacifiCorp disputes REC's assertion that the company does not adequately analyze market liquidity and depth.<sup>25</sup> REC agrees that PacifiCorp's IRP includes a cursory comparison of its planning margins and the resource adequacy assessments of the Western Electricity Coordinating Council and the Pacific Northwest Resource Adequacy Forum.<sup>26</sup> This analysis is inadequate. REC does not believe that it is appropriate to only compare the company's reserve margins with reserve margins of other organizations (which may or may not use consistent methodologies). For example, PSE is conducting its own resource adequacy studies, with different sensitivity cases based on different assumptions regarding the operation of new and existing thermal generation, and California imports.<sup>27</sup> PacifiCorp should be required to perform a more robust analysis of market availability.

**III. CONCLUSION**

20. The Commission should reject PacifiCorp's efforts to administratively dismantle PURPA, and continue to pay both new and existing QFs a monthly capacity payment and an hourly energy payment. Specifically, the Commission should adopt Staff's recommendation to increase the current capacity payment using the same methodology used for renewable portfolio standard compliance. In the alternative, the Commission should adopt REC's recommendations regarding capacity payments using planned investments in retained capacity, or the full costs of a peaking resource. Finally,

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<sup>25</sup> PacifiCorp Initial Brief at ¶ 40.

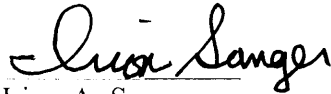
<sup>26</sup> PacifiCorp 2015 IRP, Volume 1 at 129 and Appendix J.

<sup>27</sup> PSE 2015 Draft IRP, including Appendix F and G. Available at: <https://pse.com/aboutpse/EnergySupply/Pages/Resource-Planning.aspx>

under no circumstances should capacity payments be eliminated for existing QFs that the company relies upon to continue to sell power in its IRP.

Dated this 7th day of October, 2015.

Respectfully submitted,



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