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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER A PETITION FILED BY IDAHO POWER COMPANY FOR AN ORDER DETERMINING OWNERSHIP OF THE ENVIRONMENTAL ATTRIBUTES ASSOCIATED WITH A QUALIFYING FACILITY UPON PURCHASE BY A UTILITY OF THE ENERGY PRODUCED BY A QUALIFYING FACILITY	Case No. IPC-E-04-02 PACIFICORP'S COMMENT/PROTEST OF IDAHO POWER COMPANY'S PETITION FOR DECLARATORY ORDER

Pursuant to the Notice of Comment/Protest Deadline issued by the Idaho Public Utilities Commission ("IPUC") on February 20, 2004, PacifiCorp files the following:

I. Overview of PacifiCorp

PacifiCorp is an investor-owned utility headquartered in Portland, Oregon, serving retail customers located in six western states: Idaho, Oregon, Washington, Utah, California, and Wyoming. Approximately 85 percent of PacifiCorp's customers are residential; approximately 11 percent are commercial; and approximately 4 percent are industrial. PacifiCorp is regulated by the Federal Energy Regulatory Commission pursuant to the Federal Power Act and by the state public utility regulatory commissions in each of the six states in which PacifiCorp conducts retail electric operations.

PacifiCorp has long-term, fixed rate contracts with 13 "qualifying facilities" (as such term is defined in the Public Utility Regulatory Policies Act of 1978 ("PURPA"), "QFs") in Idaho, ranging from 80 KW to 6 MW, none of the QF contracts are levelized. Idaho does not currently have a Renewable Portfolio Standards ("RPS") program that issue Green Tags, also known as renewable energy certificates (called "RECs" herein) that are a tradable commodity associated with each Megawatt Hour ("MWh") generated by a QF.

II. Introduction

In the instant proceeding petitioner Idaho Power Company ("Idaho Power") has requested that IPUC issue a declaratory order declaring:

> "that ownership of any Green Tags issued to the developers of energy produced from renewable resources be vested in those developers conditioned upon the requirement that QF developers from whom the Company purchases energy grant to Idaho Power a right of first refusal to purchase said Tags."

PacifiCorp requests that the IPUC deny petitioners requested order and instead issue an order declaring that, pursuant to obligations imposed by PURPA, ownership of all RECs associated with energy produced and delivered by a QF pass to the purchasing utility that purchases the output of the QF.

III. Argument

Idaho Power petitioned the IPUC to issue a declaratory order granting ownership of any RECs to QF developers. RECs identify generation as having come from a renewable resource. Historically, QF developers have effectively sold the entire output of their QFs to purchasing utilities under PURPA-mandated contracts. This bundled output included those characteristics that now are separately identified as RECs. Indeed, it was those specific characteristics identified as having come from that particular resource that enabled the developer to use PURPA to require the utility to purchase the power generated from it. Utilities throughout the nation have counted the output of QFs fueled by renewable resources as renewable power, and according RECs to the generator would disrupt this neutral assumption based upon the resources covered under PURPA's definition of QFs.

Idaho Power argues that now that a market has developed in the generation of environmental attributes that comprise RECs, the RECs should be "unbundled" from the overall output of the facilities, and that ownership of the RECs should, without compensation to the purchasing utility, be changed to the QFs. This would in Idaho Power's view, compensate QFs for the "risks" they incurred in deciding to construct their QF projects, could lead to additional green energy sources without the need to increase energy prices, and would act as incentive for green power investments.

Idaho Power's analysis is flawed. It confuses a shifting of benefits from the QF developer to the purchasing utility with a reduction in project development risks. To the extent that a robust market develops for RECs the cash flow from a QF may shift the balance from being an uneconomic investment to an economic investment. However, it is important to recognize that shift for what it is: a transfer of financial benefit from the purchasing utility's ratepayers to the QF developer for the developer's financing source.

The QF is assured, under PURPA, of a long-term offtake contract at the purchasing utility's avoided-cost rates. Thus perhaps the key risk—that of finding a purchaser for its product is already removed by PURPA. The ability of the QF developer to qualify for this benefit is contingent on the QF's use of a renewable resource that it can use to require the utility to purchase energy at avoided, rather than market costs. By allowing the QF to at once force a utility to buy power from it under PURPA and simultaneously keeping RECs away from the utility, the QF is effectively selling "null" or generic power to the utility, which is not the intent of the PURPA requirement. The ratepayers and utilities continue to bear the risks, not QFs, and granting ownership of the RECs to QFs in addition would result in a windfall to QF developers at the expense of ratepayers.

Even if the order that Idaho Power requests were to encourage more QF activity, as Idaho Power suggests, the program could result in the development of inefficient competitors, any entity that relies on a mandated purchase at a price that is protected from market forces, such as the QFs, is by definition unlikely to be competitive economically. Otherwise the project would stand on its own without PURPA protection. Transferring the right to RECs from the purchasing utility to the QF developer would exacerbate this perverse incentive.

a. Utilities and their ratepayers bear the risks associated with QF generation and should receive the benefits arising therefrom.

Utilities are not free to choose whether to make purchases from QFs on economic grounds. QFs come into existence by choosing not to participate in the market, but rather trigger PURPA, which requires utilities to enter into contracts with them at the utilities' avoided costs. In fulfilling this requirement, utilities purchase the output of the QF.

Over the past few years, a secondary market has developed in the identifying feature of the electricity as having come from the QF as a renewable resource. This new market has not created anything that was not there before, *i.e.*, a certificate that shows that renewable power was generated and delivered to the grid; rather, it just permits an owner of a renewable resource to sell the certificate generated by that resource into a nascent market that accords positive financial values to the certificate, which until now had always gone with that power.

The new market, created for RECs, is a <u>secondary</u> market for the identifying factors of renewable resource generation. Those identifying factors were always there, and they always went with the energy. QFs now desire to unfairly profit from the existence of this secondary market by keeping for themselves that sliver of the QF output that identifies the generation as having come from a renewable resource.

The Commission is being asked to permit QFs to withhold from the purchasing utility the very essence of what, under PURPA, required the utility to purchase the power from the QF in the first place. Simply because a market has developed in an aspect of what had always gone with the power, the QFs believe that they can now not deliver it to the ratepayers, but rather separately sell that portion of the output on that secondary market. The aspect of the QFs' power that qualified it in the first place to force the ratepayers to buy it at avoided, rather than market, costs should not be taken from the ratepayers and given to the QFs to separately sell, unless the QF's right to require ratepayers to pay avoided costs for the power is also taken.

Idaho Power is asking that the QFs be able to keep the benefit of an involuntary transaction, while profiting from a new, secondary market. Allowing QFs the benefit of selective market participation—forcing the utility to buy its output in a mechanism that is not a free market, while at the same time selling a portion of the output into what a secondary, free market will accept—provides QFs with a multiple of the benefits from that output without bearing any of the risks. PURPA is already a sufficiently market-distorting mechanism. With this precedent of allowing QFs to slice off and separately market any portion of what had always belonged to ratepayers, other portions of what the ratepayers are required to pay for through PURPA, may also be sliced off for sale in the future once there is a market according positive financial value to those portions. The result would be a continuing windfall for the QFs at the continuing expense of the utilities and their ratepayers. Traditional regulatory principles dictate that reward should follow risk, or that the bearer of the risks and costs should likewise obtain the benefits. Ratepayers have consistently borne the risk of PURPA-mandated contracts and should therefore retain the benefits of those contracts.

Ratepayers of PacifiCorp and other utilities that bear the risks in the QF contracts should receive the benefits. The ratepayers should not be deprived of a benefit they have always gotten for the past quarter-century under PURPA, simply because a secondary market has developed for that portion of the power that identifies it as having qualified under PURPA in the first pace. Any other determination would result in double-billing the ratepayer and a windfall for the QF.

b. Requiring utilities' ratepayers to pay avoided costs as well as the market rate for RECs would result in increased energy costs.

Utilities do not voluntarily enter into QF contracts. The price for QF energy is based on avoided costs, not market costs, which Congress has determined adequately compensates QFs that would otherwise be unable to compete in the market. Were the QFs required to sell power at market prices in competition with all other resources, RECs would naturally be part of the contract price subject to competitiveness and cost. However, because QFs obtain the statutory benefit of avoided costs, which are not based on market forces, Idaho Power's proposed order would require the utility to separately negotiate via the marketplace, with QFs, for RECs associated with the energy they are already purchasing. The expenses for "unbundled power" (power plus RECs) would logically be in excess of what would have been negotiated in the market to begin with.

c. Intent of RPS Programs

RPS programs are intended to promote renewable energy in the market place by attracting the most efficient renewable energy competitors. Typically, load serving entities are required to purchase renewables up to a mandated percentage of total load served. Complying entities then must select resources based upon least cost. Resources must therefore compete against each other, rather than against a set level of avoided cost.

The approach of PURPA is inherently less efficient than the RPS approach, since it does not require competition among similar resources. For load-serving entities, one of the potential future benefits of QF contracts is that they can help meet future RPS goals, whether at the national or state level. However, according RECs to the generator will deprive the ratepayers of this benefit and the load-serving entity may have to buy RECs from the very same QF generator or from elsewhere, even if the entity's power purchase agreement with the QF is the reason the RECs exist (as proof of power delivery) in the first place. This scenario poses onerous costs to the customer and the load serving entity and creates an undue windfall for the QF, all without increasing the total amount of renewables for the funds expended by the load-serving entity on top of the funds for the original power purchase agreement with QFs. Thus the approach proposed by Idaho Power can undermine the benefits of future renewables programs, including benefits from local economic development due to the arrival of new power plants. Instead, existing QFs will merely earn more windfalls without direct financial benefits to surrounding communities.

IV. Conclusion

QFs have voluntarily withdrawn from the market, and utilities bear the risk of that decision. Idaho Power's requested order would be a direct detriment to the ratepayers. The benefits should follow the risks, and the approach proposed by Idaho Power would set into motion a process whereby QFs can set aside non-power features with positive market value for sale, leaving the ratepayers with generic power equivalent to power generated from a non-renewable resource against the intent of PURPA for utilities to buy cleaner power. Further, granting RECs to QFs can reduce the effectiveness of future national and/or state renewables programs that intend, in part, to incentivize more plant investments for local economic development.

Absent the REC, power generated by a QF is undifferentiated from other power a utility utilizes to meet its obligation to serve and, therefore, the facility that produces this undifferentiated power should no longer be considered a QF. The REC is an essential aspect of a generation facility's output that resulted in the facility being designated a QF under PURPA in the first place.

For the reasons set forth above, PacifiCorp requests that IPUC deny Idaho Power's petition for declaratory order, and instead issue an order that ownership of the environmental attributes (RECs) associated with a QF pass to the purchasing utility along with the purchased power.

Service of pleadings, exhibits, orders and other documents relating to this proceeding should be served on the following:

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