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On November 10, 2003, Pacific Power & Light (Pacific) filed Advice No. 03-016 to update Schedule 5, Partial Requirements Service 1,000 KW or Less, to reflect updated avoided costs, with a proposed effective date of December 10, 2003. In light of the Commission's desire to conduct this proposed investigation, Pacific extended the proposed effective date to July 7, 2004.

Federal Requirements

In response to the energy price shocks of the early 1970s and the associated turmoil in the electric industry, the U.S. Congress passed the Public Utilities Regulatory Policies Act of 1978 (PURPA). Sections 201 and 210 of this legislation were enacted with the intent of encouraging the efficient production of electricity by non-utility generators. The legislation was designed to encourage industrial waste heat recovery and renewable energy resource development by small, non-utility power producers that were called "Qualifying Facilities" or "QFs."

PURPA directed the Federal Energy Regulatory Commission (FERC) to prescribe rules to encourage the efficient development of QFs. FERC issued rules in 1980 which implemented Section 201 and 210 of PURPA (18 CFR Section 292). These regulations basically provided that electric utilities must connect with and purchase all electric power made available by a QF that is located within the utility's service territory.

The purchase rates that the utility must pay the QF should approximate the electric procurement costs the utility can avoid (i.e., avoided costs) as a result of the QF energy purchases. FERC rules define avoided costs as:

[T]he incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate or purchase from another source. (18 CFR Section 292.101(6))

Avoided cost estimates should be just and reasonable to the customers of the utility and, at the same time, should not discriminate against QFs. PURPA and the FERC regulations allow for long term contracts, but do not require them. The FERC rules provide considerable flexibility for individual states to determine QF power purchase prices, and the terms and conditions of a utility/QF power purchase agreement.

PURPA defined two types of energy facilities that could qualify:

- 1) A cogeneration facility that produces electric energy and steam or forms of useful energy (such as heat) that can be used for industrial, commercial, heating, or cooling

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purposes. Cogenerators can be any size, so long as plant thermal output is at least 5 percent of total energy output. If fueled by oil or gas, the plant must meet certain efficiency criteria.

2) A small power production that produces electric energy using biomass, waste, or renewable resources as the primary energy source. These types of facilities must have a nameplate capacity of 80 MW or less. In addition, at least three-fourths of the plant's input energy must be derived from renewable resources or waste products.

Oregon's Policy

Beginning in 1979, Oregon began adopting laws (ORS 758.500, et seq.) and rules (OAR 860-29-0001, et seq.) at the state level¹. By the mid-1980s there were approximately 50 QF contracts representing nearly 270 MW of capacity. Most projects were either hydro or biomass (wood waste). In a 1988 report to the Oregon Legislature, the Commission stated its policy regarding PURPA implementation:

It is the policy of the Oregon Public Utility Commission that federal and state laws and regulations will be carried out in a manner that encourages the economically efficient development of qualifying facilities in Oregon. It is the goal of the Commission to ensure desired qualifying facility development through stable and predictable actions by the Commission, accurate price signals, and full information to developers and the public regarding power sales requirements.

PURPA and FERC regulations provide little guidance on how to calculate avoided costs. Historically, individual state regulatory agencies have formulated avoided cost methodologies that best fit each state's unique circumstances.

In Oregon, regulated utilities are required to make periodic avoided cost filings for OPUC review and approval. Generally, avoided cost filings are made shortly after Commission acknowledgment of the utility's Least-Cost Plan (LCP, Integrated Resource Plan, or IRP), generally every two years. The avoided cost filing includes any updates to information in the plan, as well as a revised tariff for power purchases for qualifying facilities 1 MW or less. Rates are distinguished by on-peak and off-peak hours and may be differentiated by season. For larger projects, the utility negotiates rates based on the Commission-approved avoided costs and adjustment factors outlined in PURPA.

¹ ORS 757.612 (4) exempts electric companies that satisfy their public purpose obligations (Portland General Electric and PacifiCorp) from Oregon PURPA laws (ORS 758.505 to 758.555). The Commission has granted a similar exemption from related Administrative Rules (see OAR 860-029-0001). The Commission is still responsible for its PURPA implementation responsibilities granted by the federal law.

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The avoided cost filing includes a long-term forecast for estimating when new resources will be needed to meet projected load growth. The filing also identifies the type of resource the utility plans to use to meet load growth (as defined in its IRP) — and to serve as the basis for calculating avoided energy and capacity costs. The utilities currently use as their incremental resource a natural gas-fired power plant (a combined-cycle combustion turbine — CCCT).

Historically, avoided costs in Oregon have been calculated using: (1) the variable costs of operating existing generating facilities until projected supply deficits occur and (2) when new resources are needed, their estimated capacity and energy costs. The avoided costs are calculated for 20 years, consistent with the time horizon the utility considers in its IRP. This type of methodology results in what is known as administratively determined avoided costs.

A brief summary of the Commission's implementation policy for PURPA follows:

- Each Oregon electric utility continues to make periodic avoided cost study filings. The timing of these filings is tied to the IRP two-year cycle. Much of the load and resource data in the filed avoided cost study is derived from the utility's acknowledged IRP. Due to the time lag between IRP development and acknowledgment, some of the data in the avoided cost study needs to be updated.
- The length of the avoided cost stream listed in the study is consistent with the time horizon considered in the utility's IRP (currently 20 years).
- The utility's incremental resource is as defined in its IRP.
- QFs with a facility capacity of one megawatt or less may choose to receive a standard rate for power deliveries.² The standard rates are approved by the Commission and included in the company's tariffs (including some of the terms and conditions). The Commission also approves the accompanying avoided cost

² The tariff schedules are:

Portland General Electric – Schedule 201, Small Power Production

http://www.portlandgeneral.com/about_pge/regulatory_affairs/pdfs/schedules/sched_201.pdf

Pacific Power & Light – Schedule 5, Partial Requirements Service 1,000 Kw Or Less

http://www.pacificpower.net/Regulatory_Rule_Schedule/Regulatory_Rule_Schedule2113.pdf

Idaho Power – Schedule 86, Cogeneration and Small Power Production Standard Rates

<http://www.idahopower.com/aboutus/regulatoryinfo/tariffPdf.asp?id=89&.pdf>

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filing, but that information is not included in the tariff. It is maintained in the Commission's tariff filing records.

- QFs larger than one megawatt negotiate contract terms, including price. The Commission-approved estimates of avoided costs are used as the basis for negotiation of utility/QF contract prices.
- The utility's avoided cost study is required - for negotiation purposes - to list generic contract terms, but the filing does not include a standard contract applicable to all QFs.
- The current practice is for QF contracts to be established for terms of five years. Existing contracts are renewable in five-year increments.
- Dispute resolution services are offered only through the Commission's formal complaint process provided by ORS 756.500. Commission staff can provide information about qualifying facilities in Oregon, state statutes, and Commission rules. Commission staff may interpret administrative rules — for example, by answering questions about the consistency of a proposed action with current rules.

Issues for the Investigation

The following issues have been identified for possible consideration in this investigation:

1. Contract length and price structure - What is the appropriate contract length which is consistent with the Federal PURPA law standards and which will balance the interests of the QF developers and the utility's customers? Current practice is a five-year term. What is the appropriate pricing structure (e.g., prices that vary by year, prices that are levelized over the contract term) and should the Commission specify that structure? Current practice varies by utility, size of customer, and date of agreement.
2. Size threshold for standard rates - What size facilities should be eligible for standard purchase rates and a standard power purchase agreement which is consistent with the Federal PURPA law standards and which will balance the interests of the QF developers and the utility's customers? The current threshold is one MW.
3. Utility tariff content - What prices, terms and conditions should be included in utility tariffs? How should the Commission ensure that all terms and

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- conditions it approves in the avoided cost filings are publicly available?
Current practice is to include only basic pricing, terms and conditions in the tariff for small qualifying facilities (1 MW or less). The other avoided cost information approved by the Commission is contained in the utility's filing.
4. Avoided cost calculation methods - What is the appropriate method for calculating avoided costs? Current practice is to use (1) the variable costs of operating existing generating facilities until projected supply deficits occur and (2) when new resources are needed, their estimated capacity and energy costs.
 5. Applicability of Oregon PURPA administrative rules – Since federal PURPA still applies to all electric companies and the Commission is responsible for its implementation, what is the practical effect of the 757.612 exemption for PGE and Pacific? The administrative rules need further review to differentiate the rules that implement federal PURPA from the rules that were specific to Oregon PURPA law. What is the Commission's role related to consumer owned utility PURPA issues?
 6. Dispute mediation - What should be the Commission and staff roles in mediating or litigating PURPA-related disputes? Current practice is described above.
 7. Alternative forms of regulation – Do utilities have a financial incentive to discourage the development of qualifying facilities due to reduced sales? If so, should the Commission use other types of regulation (e.g., decoupling) to mitigate the disincentives?
 8. Filing cycle for avoided cost studies and related tariffs - Currently the companies file avoided cost studies about every two years following IRP acknowledgment, and they update standard purchase rates and contract terms accordingly. In addition, OAR 860-029-0080(4) requires electric utilities contracting to buy non-firm power from a qualifying facility to submit quarterly filings of avoided energy costs. PGE is the only Oregon investor-owned utility with such a contract. Even though the rule no longer applies to PGE, the company files, and staff reviews, quarterly avoided cost filings. Staff recommends consideration of this issue in the context of the Commission's review of Least-Cost Planning (Docket No. UM 1056).
 9. Net metering – Net metering allows customers, in essence, to run their meters backward and receive credit on their electric bill when their generation

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exceeds their use. Currently, eligibility is limited to customers with a generating capacity of 25 kW or less from certain types of resources. In the future, the Commission may want to consider raising this threshold.

10. Interconnection procedures and agreements – Staff is monitoring federal proceedings related to these issues. At a later date, staff plans to ask the Commission to open a proceeding to establish state interconnection standards.
11. Standby rates – Staff is currently investigating PGE's standby tariffs in Docket No. UE 158.

Scope and Timing of the Investigation

Based on comments received to date, staff believes it is imperative that the Commission investigate the first issue as quickly as possible. Wind turbine sizes are increasing and projects are typically exceeding 1 MW and, therefore, staff recommends investigation of the second issue at the same time. Staff recommends that the Commission also open an investigation of issues three through six, recognizing that these issues will require more extensive investigation than the first two issues. Staff does not recommend addressing issues seven through eleven in these investigations.

To resolve the Phase I issues (one and two), staff recommends that the Commission hold a prehearing conference to identify interveners and set a schedule. Staff plans to propose a schedule that contemplates a Commission order in April. The companies would then be required to file compliance tariffs immediately thereafter.

For Phase II issues (three through six), staff recommends a longer proceeding with more time for investigation and settlement.

Alternatives include:

Alternative A (recommended): Open an investigation that includes Phase I (issues one and two) and Phase II (issues three through six).

Alternative B: Alternative A, but investigate issue one only.

Alternative C: Conduct a Phase I investigation only.

Alternative D: Open an investigation to address issues one through six.

Comments

I solicited informal comments on the draft of my initial staff report under an expedited schedule. PGE provided comments on the issues and the timing of the investigation and indicates they will file written comments. Pacific orally recommended that the Commission choose Alternative D and provided comments on the wording of the first issue. Paul R. Woodin of Western Wind Power filed comments regarding the five-year contract length and the size threshold and recommends that the Commission open the investigation. Bruce Craig of ASCentergy Corporation filed comments recommending the opening of the investigation. I will forward the comments of Mr. Woodin and Mr. Craig to the Commission under separate cover.

PROPOSED COMMISSION MOTION:

An investigation described as Alternative A be opened.