UM 1442

ITEM NO. 3

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 25, 2009

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** **August 26, 2009**

DATE: August 20, 2009

TO: Public Utility Commission

FROM: Ed Durrenberger ED

THROUGH: Lee Sparling, Ed Busch and Maury Galbraith MG for LS EB MG

SUBJECT: PACIFIC POWER & LIGHT: (Advice No. 09-012) Proposes revisions to the tariff related to avoided cost purchases from qualifying facilities of 10,000 kW or less, in compliance with Order No. 05-584.

STAFF RECOMMENDATION:

Staff recommends that the Commission allow Pacific Power & Light's (PacifiCorp or company) Advice No. 09-012 to go into effect on August 26, 2009, and open an investigation into the new rates.

DISCUSSION:

On July 9, 2009, PacifiCorp filed Advice No. 09-012, requesting to revise Schedule 37, Avoided Cost Purchases from Qualifying Facilities (10,000 kW or less). The company states that their filing was made in accordance with provisions of Commission Order No. 05-584 in Docket UM 1129.

This filing proposes to update the rates PacifiCorp pays for power from a small Qualifying Facility (QF) under terms of a Standard Avoided Cost Power Purchase Agreement (PPA). The company's standard avoided costs were last updated on July 12, 2007. The updated avoided costs are lower during both the resource sufficiency period and the resource deficiency period. The sufficiency period rates are lower than they were in the past because they are based on wholesale electricity price forecasts which are currently depressed due to the continuing economic recession and very low natural gas prices. The deficiency period rates are lower because the long-term forecast of natural gas prices is lower than two years ago due to expectations of increased supply.

The proposed lower avoided cost rates are a concern among the QF community. A lower avoided cost rate makes it harder for a new small QF to obtain development funds or an existing QF having to renew its PPA to remain economically viable. In addition, large QFs use the avoided cost rates as a basis for negotiating individual agreements and are affected by lower avoided cost rates, too. Staff has received notice from several parties concerned with the proposed new lower avoided cost rates. The Industrial Customers of Northwest Utilities (ICNU), citing much lower rates during the resource sufficiency period, has requested that the Commission conduct an investigation and hearings in to whether the rate revisions proposed are fair, just and reasonable prior to allowing the new rates to become effective. The other parties, including Biomass One, Swalley Irrigation District and Farmers Irrigation District, have joined ICNU's request.

Staff's Analysis:

Staff's investigation into the filing indicates that the Advice was filed according to the schedule required by OAR 860-029-0080 (Rule). The Rule requires that avoided cost rates be filed at least every two years as well as within thirty days of acknowledgement of the utility's Integrated Resource Plan (IRP). This filing satisfies the two year update requirement.

By definition, the utility's avoided costs represent the forecasted benefits that accrue to the utility and its customers from receiving the output of the QF. Commission Order No. 05-584 Section III(C) describes in detail how the pricing is to be derived.

During the utility's resource sufficiency period, the monetized benefit of the QF output is the forecasted wholesale electricity market price. PacifiCorp used forward market prices for wholesale electricity available at the time of its filing. PacifiCorp's sufficiency period avoided costs have been calculated consistent with the methodology described in Order 05-584 and in the previous Schedule 37 updates.

During the utility's resource deficiency period, the monetized benefit of the QF output is the forecasted fixed and variable costs of a proxy resource. The Commission has determined that the current proxy resource is a natural gas-fired combined-cycle combustion turbine. PacifiCorp has used forward market prices for natural gas to determine the variable costs of the proxy resource. PacifiCorp's deficiency period avoided costs have been calculated consistent with the methodology described in Order 05-584 and in the previous Schedule 37 updates.

The company filed its new avoided cost rates in accordance with the requirements of the Rule and has calculated its new avoided cost rates consistent with the methodology adopted by the Commission in Orders in Docket UM 1129. The new avoided costs accurately represent market wholesale power prices during the resource sufficiency period and the fixed and variable operating costs of a combined cycle combustion turbine during the resource deficiency period. The company calculated its resource sufficiency period using the same methodology used in the most recent filing, Advice 07-021.

In summary, Staff's review indicates that PacifiCorp has accurately calculated its avoided costs and filed the new rates in accordance with the Rule.

In previous avoided cost filings, at times of increasing avoided cost rates, the utility's update filing did not generate much controversy. However, with decreasing avoided cost rates, a number of parties have expressed an interest in this filing. Parties have requested that the new rates be suspended and an investigation and hearing be held to determine if the rate revision is fair, just and reasonable. Staff shares the concern that the avoided cost rates be set accurately so that customers pay QF rates that are fair, just, and reasonable. In addition, DOJ counsel has advised that although the Commission has not determined whether the avoided cost filing constitutes a tariff under ORS 757.210, a hearing is appropriate upon a valid written complaint either as required by ORS 757.210 or as a matter of parties being able to exercise their rights to due process.

Staff recommends that PacifiCorp's Advice filing be allowed to go into effect as filed and that the Commission open an expedited investigation and hearing limited to whether PacifiCorp's filing is compliant with the methodologies for calculating avoided costs detailed in Order No. 05-584. Staff does not recommend a suspension of the filed avoided cost rates during an investigation and hearing for three reasons. First, no party has provided information or argument altering Staff's finding that PacifiCorp has followed the Commission's instructions for calculating its avoided costs. Second, suspending the filing would leave the current higher avoided costs in place, potentially harming customers. Staff's counsel has advised that, even if the avoided cost filing constitutes a tariff under ORS 757.210, ORS 757.215(4), the statute allowing suspension of the filing subject to investigation and refund, is not an option in this case because the refund statute only contemplates refunds due to setting initial rates too high, not too low as implied by comments filed to date. Third, Staff does not believe it is good policy to allow new avoided cost rates to be delayed simply upon request despite lack of just cause.[1]

Staff notes that a possible compromise position would be to allow the rates to go into effect during the investigation period but allow any Qualifying Facility customer who enters into a contract under the rates to opt-out of the contract and execute a new contract using, on a going-forward basis, the final rates approved by the Commission at the end of this proceeding.

On August 19, 2009 PacifiCorp filed a response to the letters from ICNU and Biomass One requesting to suspend the filing for investigation and hearing. PacifiCorp points out that the avoided cost rates proposed were determined according to Commission approved methods for calculating the rate which was supported by a complete set of work papers. The company notes that it had not yet received any requests for additional supporting documents despite having extended the effective date once to allow for further investigation. PacifiCorp further states that it did not necessarily oppose the requests for suspension and investigation and hearing so long as the company was allowed to either delay entering in to new QF PPAs or renew existing PPAs or make new and renewed QF PPAs conditional until the investigation was complete and the new rates were in place. PacifiCorp concludes by stating that customer's interests are best served by implementing the new avoided costs as soon as possible and that any delay in approving avoided cost rates, such as waiting for the current IRP process to conclude, is plainly contrary to the Commission's goals stated in Order 05-584, of encouraging QF development while protecting customers by insuring that utilities incur the same amount for QF power as the costs they would have incurred otherwise.

PROPOSED COMMISSION MOTION:

The tariff sheet filed in PacifiCorp Advice No. 09-012 be allowed into effect on August 26, 2009 and that the Commission open an investigation and hearing to determine if the rate revision has been determined consistent with the methodologies and calculations required by Order No. 05-584.

[1] Staff also notes that the period that these rates will be in effect is most likely only a few months because PacifiCorp will file new avoided cost rates within 30 days following the acknowledgement of its current Integrated Resource Plan in Docket No. LC 47 expected early next year.