



RICHARDSON & O'LEARY

ATTORNEYS AT LAW

Tel: 208-938-7900 Fax: 208-938-7904
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

July 22, 2011

Commissioner Susan Ackerman
Commissioner John Savage
Public Utility Commission of Oregon
550 Capitol St. NE
Salem, Oregon 97301-2551

Re: Objection of the Community Renewable Energy Association to Pacific Power, a Division of PacifiCorp, Advice No. 11-011; Schedule 37 – Avoided Cost Purchases from Qualifying Facilities (10,000 kW or less)

Dear Commissioner Ackerman and Commissioner Savage:

I write on behalf of the Community Renewable Energy Association (“CREA”) to object to the approval of PacifiCorp’s Advice No. 11-011 filed with the Public Utility Commission of Oregon (“Commission”) on June 27, 2011. CREA supports the general objections raised in the letter filed by the High Plateau Windfarm, LLC; Lower Ridge Windfarm, LLC; Mule Hollow Windfarm, LLC; and Pine City Windfarm, LLC in objection to Advice No. 11-011.

The Oregon legislature has instructed that the Commission promote community scale renewable energy projects.¹ But PacifiCorp’s filing proposes a completely inflexible solution to a limited problem, which – if adopted – would create impossible timelines and project constraints that will certainly discourage community renewable energy projects located in PacifiCorp’s Oregon service territory. CREA respectfully request, therefore, that the Commission either reject the Advice Filing outright or at a minimum not process the Advice Filing by any means short of a full investigation and evidentiary hearing providing interested parties full contested hearing and due process rights, as required by Oregon law, ORS 757.205, 757.210. Furthermore, CREA respectfully request that the Commission suspend the effect of Advice No. 11-011 for six months, pending completion of a full investigation, as allowed by Oregon law, ORS 757.215.

¹ Specifically, Oregon’s renewable portfolio standard law instructed the Commission, along with other executive agencies, to establish policies and procedures promoting the goal of serving at least 8% of retail load from community scale projects under 20 MW by 2025. ORS § 469A.210.

CREA HAS AN INTEREST IN THIS MATTER

CREA is a non-profit 190 organization that promotes, educates and advocates for community renewable energy in Oregon. In its efforts to establish a viable market in Oregon for community scale renewable energy projects, CREA has intervened and actively participated in dockets and cases at the Commission regarding the implementation of the mandatory purchase provisions of the Public Utility Regulatory Policies Act of 1978, including UM 1129, UM 1392, UM 1442, and UM 1443. Because PacifiCorp's Advice No. 11-011 would modify the terms under which community renewable energy projects may sell their output to PacifiCorp as qualifying facilities ("QFs"), CREA has a direct and substantial interest in the Commission's processing of the Advice Filing. The issue addressed in PacifiCorp's filing – delivery of QFs to PacifiCorp's "load pockets" – is an issue likely to affect community renewable energy projects located in PacifiCorp's territory in rural parts of Oregon.

PACIFICORP'S ADVICE FILING SHOULD BE REJECTED BECAUSE IT PRESENTS AN INFLEXIBLE AND UNWORKABLE SOLUTION TO A PROBLEM WITH MANY DIFFERENT SOLUTIONS THAT WOULD BE LESS ONEROUS ON QFS.

PacifiCorp proposed new procedures for QF negotiation in Section B.7. of its Schedule 37 are unworkable for QFs. PacifiCorp proposes in section B.7(b) that QFs interconnected to PacifiCorp's system must purchase third party Point to Point ("PTP") Transmission service if they are located in a PacifiCorp load pockets where there may be as little as one hour out of the year where network load exceeds network resources. This is an onerous and expensive requirement that is unnecessary in light of the multiple other solutions. Other possible solutions include, but are certainly not limited to, the QF's agreement be redispatched or curtailed, as allowed in PacifiCorp's Open Access Transmission Tariff, section 32.3. There are obviously many alternatives that any tariff addressing this issue must require PacifiCorp to offer to the QFs.

Additionally, PacifiCorp's revision to section B.7.(c) improperly purports to revoke a QF's entitlement to an executed contract within 15 business days of PacifiCorp's determination that the QF resource cannot be designated a network resource. The tariff improperly contains no provision requiring any deadline for PacifiCorp to respond to a QF's proposed solutions to the perceived load pocket problem, or even to provide a fully executed amendment to the contract. It requires the QF to reach "agreement" with PacifiCorp within 15 days on the costs of the PTP Transmission, and section 2.1 of the proposed standard contracts requires "a written amendment" to the contract to reach such "agreement." Obtaining a written contract or amendment with PacifiCorp does not occur within 15 business days. In fact, sections B.5. and B.6. of the current and proposed Schedule 37 give PacifiCorp 15 business days to response to any QF comment on a contract during negotiations. Thus, if PacifiCorp takes its full 15 business days to respond, it would be impossible for a QF to ever comply with PacifiCorp's new proposed timelines for agreeing to a solution to the load pocket problem. That is not the case under the current Schedule 37. Revocation of QF contracts would become the rule, rather than the exception. Simply put, PacifiCorp achieves very little in fifteen days time, and it is not fair to adopt a tariff under which PacifiCorp's failure to act in 15 days will automatically revoke a QF's contract and

entitlement to published rates contained therein at a point in time when the QF will have invested substantial time and money in the project. It is very important to note that once the QF loses its entitlement to its existing contract under PacifiCorp's proposed rules, PacifiCorp will surely argue that the QF can only be entitled to any superseding avoided cost rates, which could be lower than those that the QF initially intended to obligate itself. To allow that to happen simply because the QF was unable to get a final agreement signed and approved by PacifiCorp within 15 business days would be patently unfair.

Furthermore, PacifiCorp's proposed language in section B.7.(b) sets forth no duty on PacifiCorp to investigate the available network transmission in an adequate fashion, nor does it require PacifiCorp to make available to a QF the option – at the QF's choice – to investigate ability to designate the QF as a network resource in advance of contract execution. Such advance investigation – which can only be adequately conducted by PacifiCorp merchant lodging a formal network transmission request with PacifiCorp's transmission function employees Company during contract negotiations – may provide additional time, and lead to creative solutions beneficial to both parties. For example, if PacifiCorp were planning an upgrade to its transmission system connecting the load pocket to the rest of PacifiCorp's system, the QF may be able to completely avoid the problem identified by PacifiCorp if the QF simply agreed to delay its online date until the time when the upgrade was complete. But PacifiCorp's proposed tariff provides no language requiring PacifiCorp to provide such an option to the QF. The tariff and the proposed revision to Section 2.1 of the standard QF contracts must require PacifiCorp to investigate availability of network transmission and the various options in good faith, and require PacifiCorp to agree to pay damages to the QF for a failure to conduct an adequate investigation.

CONCLUSION

In closing, the existing Schedule 37 is adaptable and can be used to address the problem identified by PacifiCorp. These issues could and should have been raised in prior proceedings. CREA respectfully request the Commission reject Tariff Advice No. 11-011 outright as it represents a direct affront to Order No. 05-584. In the alternative, should the Commission desire further information and legal briefing on the appropriateness of Tariff Advice No.11-011, a full evidentiary hearing with legal briefing opportunities should be established subsequent to the suspension of the effective date of Tariff Advice No. 11-011.

Sincerely,



Peter J. Richardson, OSB #06668
RICHARDSON AND O'LEARY, PLLC
Attorneys for:
Community Renewable Energy Association