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Via U.S. Mail and Electronic Mail

October 3, 2011

Judge Traci Kirkpatrick
Public Utility Commission of Oregon
550 Capitol St. NE
Salem, Oregon 97301-2551

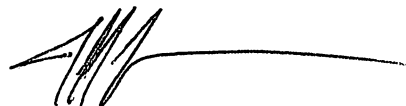
RE: UE 235

Dear Judge Kirkpatrick:

The parties have developed a consensus recommendation regarding scope and schedule for phase one of UE 235. The recommendation is attached as Enclosure A. All parties received notice of the enclosed recommendation and have had an opportunity to participate in its development. PacifiCorp, Community Renewable Energy Association, and Commission Staff have approved the recommendation. No other party has objected to the recommendation. Enclosure B provides background on how the parties reached their recommendation.

PacifiCorp respectfully requests a scheduling order adopting the recommendations in Enclosure A.

Sincerely,



Jeff Lovinger
Lovinger Kaufmann LLP
Of Attorneys for PacifiCorp

cc (via email): UE 235 service list

Enclosure A:
Recommended Scope and Schedule for Phase One of UE 235

Questions Presented: Is PURPA violated if PacifiCorp is required to pay Schedule 37 prices and:

1. PacifiCorp must also pay for third-party transmission to move qualifying facility output from the point of delivery to PacifiCorp load?
2. PacifiCorp must also pay for third-party transmission to move qualifying facility output from the point of delivery to PacifiCorp load; and the cost to purchase third-party transmission service to move qualifying facility output to PacifiCorp load is not, in aggregate, offset by savings in third-party transmission service costs created by other Schedule 37 qualifying facilities?
3. PacifiCorp must also pay for third-party transmission to move qualifying facility output from the point of delivery to PacifiCorp load; and the cost to purchase third-party transmission service to move qualifying facility output to PacifiCorp load is, in aggregate, offset by savings in third-party transmission service costs created by other Schedule 37 qualifying facilities?

Process and Schedule: (if scheduling order is issued after October 5, then all other dates to be advanced on a day-for-day basis)

1. Scheduling Order—ALJ to issue scheduling order establishing process and schedule for Phase One of UE 235 by October 5, 2011.
2. Initial Brief—PacifiCorp to file its initial brief on the Questions Presented by October 26, 2011.
3. Response Briefs—All parties other than PacifiCorp to file response briefs on the Questions Presented by November 17, 2011.
4. Reply Briefs—All parties to file reply briefs on points raised in response briefs by December 12, 2011.
5. OPUC Decision—Phase One decision anticipated by January 12, 2012.

Subsequent Phases:

1. If, as a result of Phase One, the Commission concludes there is no conflict between PURPA (or Oregon's implementation of PURPA) and the third-party transmission issue raised in Advice No. 11-011, the Commission will need to determine whether there is any reason to continue with an investigation. PacifiCorp reserves the right to

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Enclosure A

seek rehearing or otherwise appeal any determination that third-party transmission costs need not be addressed in Schedule 37.

2. If, as a result of Phase One, the Commission concludes that there is a conflict between PURPA (or Oregon's implementation of PURPA) and the third-party transmission issue raised in Advice No. 11-011, then Phase Two of the investigation can focus on whether the solution proposed by PacifiCorp in Advice No. 11-011 is acceptable or whether there are better solutions.
3. If, as a result of Phase One, the Commission determines that it cannot decide whether there is a conflict with PURPA (or Oregon's implementation of PURPA) without further inquiry, then Phase Two would involve a further inquiry as determined necessary by the Commission, including whether the cost to purchase third-party transmission service to move qualifying facility output to PacifiCorp load is not, in aggregate, offset by savings in third-party transmission service costs created by other Schedule 37 qualifying facilities.

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Enclosure B

Enclosure B:
Background on Scope and Schedule for Phase One of UE 235

On July 27, 2011, PacifiCorp filed Advice No. 11-011. PacifiCorp proposes to revise its Oregon Tariff Schedule 37. The revisions make it clear that PacifiCorp does not have to pay full Schedule 37 prices *and* pay for third-party transmission service to move a Schedule 37 qualifying facility's (QF's) output from the point of delivery to PacifiCorp load. In support of Advice No. 11-011, PacifiCorp filed testimony and a legal memorandum. In the legal memorandum PacifiCorp argued that under PURPA PacifiCorp cannot be required to pay more than its full avoided cost for QF output and that any power purchase agreement that results in PacifiCorp paying more than full avoided cost is void *ab initio*. PacifiCorp reasoned that, because Schedule 37 published rates are intended to represent PacifiCorp's full avoided cost, requiring it to also pay for third-party transmission to move the QF output to PacifiCorp load would violate PURPA's prohibition of making a utility pay more than full avoided cost for QF output. PacifiCorp provided testimony stating that, due to the way third-party transmission providers charge for point-to-point transmission service, savings in third-party transmission costs caused by Schedule 37 QFs will never be sufficient to offset the increased third-party transmission costs caused by Schedule 37 QFs.

On September 8, 2011, the Commission issued an order suspending Advice No. 11-011 for six months (effective August 18, 2011) and initiating UE 235, an investigation into Advice No. 11-011. On September 9, 2011, the parties to UE 235 participated in a prehearing conference. Commission Staff recommended that Phase One of UE 235 involve only legal briefs and focus on the core legal question of whether PURPA is violated if PacifiCorp is required to pay Schedule 37 prices and required to pay for third-party transmission service to move QF output to PacifiCorp load. All parties agreed with Staff's proposal and PacifiCorp was tasked with proposing the legal question and a briefing schedule. On September 13, 2011, PacifiCorp proposed a process involving legal briefs and testimony. Other parties indicated that they would need discovery if testimony was involved so PacifiCorp revised its proposal to involve only legal briefs but attempted to push into Phase Two the question of whether Schedule 37 QFs as a class do or do not create any significant cost savings by relieving PacifiCorp of the need to purchase third-party transmission service. Staff was agreeable but Intervenor Community Renewable Energy Association (CREA) opposed this approach.

In an attempt to address CREA's concerns, PacifiCorp made a new proposal on September 21 involving the same core legal question but without attempting to move any part of the question into Phase Two. PacifiCorp also proposed an expedited and limited discovery and testimony process in addition to legal briefing in order to allow the parties to explore the question of whether Schedule 37 QFs as a class do or do not create any significant cost savings by relieving PacifiCorp of the need to purchase third-party transmission service. Staff again agreed with PacifiCorp's proposal but CREA proposed extensive revisions.

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On September 23, 2011, CREA proposed revising the question presented to add a burden of proof to PacifiCorp and to make the question whether Schedule 37 should be revised rather than whether PURPA is violated. CREA also proposed an expansion of the discovery and testimony schedule and added a hearing to precede briefing. PacifiCorp objected to CREA's proposed changes to the question presented and expressed concern that CREA's expanded discovery, testimony, and hearing process abandoned any attempt to take advantage of the investigation format by breaking the issues into parts and considering the core legal question first.

On September 27, 2011, PacifiCorp proposed that the parties return to their initial concept of a Phase One involving only legal briefs and focused on the core legal question of whether there would be a PURPA violation (leading to void PPAs) if PacifiCorp is required to pay Schedule 37 prices and pay for third-party transmission to move Schedule 37 QF output to PacifiCorp load. PacifiCorp added a second question presented to tease out the impact, if any, if the question of whether Schedule 37 QFs as a class do or do not create any significant cost savings by relieving PacifiCorp of the need to purchase third-party transmission service.

On September 28, CREA responded by proposing a third question presented and some modifications to the "subsequent phases" portion of PacifiCorp's September 27 proposal. On September 30, PacifiCorp agreed to CREA's suggestion to add a third question presented and PacifiCorp suggested its own modifications to the "subsequent phases" portion of the proposal. On September 30, CREA indicated it could support this latest proposal. No other party has objected to the proposal. On October 3, Commission Staff asked PacifiCorp to propose some slight adjustments to the schedule. PacifiCorp did so. CREA and Commission Staff approved the schedule modifications. No party has objected to the minor schedule modifications. On October 3, Commission Staff asked PacifiCorp to submit the proposal to Judge Kirkpatrick as the parties' consensus recommendation.

The latest proposal (Enclosure A to the October 3, 2011 letter from Jeff Lovinger to Judge Traci Kirkpatrick) allows the parties to focus on strictly legal questions in Phase One. This allows for an accelerated Phase One schedule. At the conclusion of Phase One, the Commission can decide: (1) that no conflict with PURPA exists; or (2) that a conflict with PURPA exists and Phase Two of the investigation should consider solutions; or (3) that the Commission cannot determine if a conflict with PURPA exists until the Commission has further investigated whether Schedule 37 QFs can provide third-party transmission benefits sufficient to offset the cost of third-party transmission needed to move Schedule 37 QF output from the point of delivery to PacifiCorp load.

CERTIFICATE OF SERVICE

I hereby certify that, on October 3, 2011, I served a true and correct copy of the foregoing *PacifiCorp's October 3, 2011 Letter to Judge Traci Kirkpatrick regarding OPUC Docket No. UE 235* on the following named persons/entities by electronic mail:

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DATED this 3rd day of October, 2011.

LOVINGER KAUFMANN LLP



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