

Falls Creek Hydro Project, L.P.

September 1, 2017

Chair Lisa Hardie
Commissioner Stephen Bloom
Commissioner Megan Decker
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

Via email

RE: Falls Creek Hydro, Limited Partnership vs. Portland General Electric
Docket No. UM 1728

Dear Chair Hardie,
Commissioner Bloom, and
Commissioner Decker:

Thank you for allowing me to introduce myself and the Falls Creek Hydroelectric project (“Falls Creek Hydro”) and present information on why the Public Utility Commission of Oregon (“Commission”) should reject Portland General Electric Company’s (“PGE”) proposal to reduce avoided cost rates retroactive to August 8, 2017. We expected rates to change in October or November, and with that end date in mind, Falls Creek Hydro started the power purchase agreement process back on June 6, 2017 with the intention of obtaining a contract before rates changed following acknowledgement of PGE’s integrated resource plan. We would have started sooner if we had been aware that PGE’s rates could change in August or September.

Falls Creek Hydro is an existing hydroelectric project which should have been able to complete its contracting process without difficulty. PGE systematically delayed and violated the Commission approved contract process in an effort to deny me a contract. Despite these efforts, according to PGE’s own process, an executable contract was due to me on August 25, but PGE has refused to execute a contract due to its request for a rate decrease on August 8.¹ Essentially, PGE is waiting to see what action the Commission will take before executing my contract. I request that the Commission not approve any new rates until after PGE commits to execute contracts with projects like mine, and no later than September 18.

Introduction

My name is Gary Marcus and I live in Eugene, Oregon. I graduated from the University of Oregon Law School in 1980, and received an MS in Interdisciplinary Studies of History, Economic and Political Science in 1977. I received a BA from the Evergreen State College in

¹ Falls Creek Hydro believes that an executable PPA should have been provided no later than July 20, 2017.

Olympia, Washington in 1975. I am a member of the Oregon State Bar but do not currently practice law.

I am the owner of Falls Creek Hydro in Linn County, Oregon. Falls Creek Hydro is an award-winning facility that has been generating electricity for 33-years, with a 99% availability factor. Falls Creek began commercial operation in 1984 and is a 4.1 megawatt ("MW") nameplate facility with installed capacity of 4.9 MW.

On June 6, 2017, I submitted an application to PGE, to sell the power, capacity, and environmental attributes of Falls Creek under a 15-year standard contract beginning on January 1, 2020.

PGE is required under various PURPA laws and regulations to purchase the output of my facility, and the Schedule 201 process should facilitate that purchase. Falls Creek is precisely the kind of facility that PGE should be proud to purchase from. The contract negotiations should have proceeded quickly and smoothly, since Falls Creek Hydro is up and running, and was ready, willing and able to sign a PPA with PGE the day it filed its application.

Unfortunately, PGE has not negotiated with Falls Creek Hydro in good faith. PGE's actions over the past 3 months suggest that PGE planned to delay the signing of a contract with Falls Creek Hydro until it could lower its avoided cost rates. PGE knew that lower rates would drive Falls Creek out of business, because I told PGE early on in our negotiations that Falls Creek could not operate under rates any lower than those in effect in June, 2017. By delaying my negotiations, I believe PGE was intentionally trying to put Falls Creek Hydro out of business.

Portland General Electric used the following tactics to deceive, delay and defraud Falls Creek.

- Abused the Schedule 201 processes by failing to read material Falls Creek sent to PGE, and then using false, incorrect or fabricated information when responding to Falls Creek Hydro.
- Intentionally made false statements about the law, claiming that Falls Creek had to have a point of delivery settled before PGE could even offer Falls Creek a PPA.
- Failed to respond to Falls Creeks' emails seeking a more open process and transparency from PGE.
- Promised on August 3rd that it would offer Falls Creek an executable contract under then existing QF prices by August 25th, and then requesting the Commission lower its avoided cost prices on August 4th, without prior notice to Falls Creek.

- Refusing to live up to its promise to provide an executable contract.

Falls Creek Hydro has separately filed a complaint that requests that the Commission order PGE to provide Falls Creek Hydro with a PPA with standard avoided cost prices in effect on July 20, 2017, when PGE should have presented Falls Creek with an executable contract. In this proceeding, Falls Creek Hydro requests that the Commission deny PGE's efforts to obtain an early price change, and ensure that projects like mine that should have received executable contracts before the price change will actually get executable contracts.

History and Value of Falls Creek

Since the 1970s I have been concerned about environmental degradation and have devoted much of my life to implementing practical solutions that would create a sustainable world while at the same time promoting economic growth. In 1977, I was the Legislative Assistant to then Oregon State Senator George Wingard. My job was to help Senator Wingard pass his bills. Among the 16 bills that Senator Wingard passed that session were those that required wall and ceiling insulation in the construction of all new residential and commercial buildings. Until then there were no insulation requirements for Oregon buildings. That legislation was bitterly opposed by the housing industry and the construction trades who objected to higher short-term costs. Fortunately, those bills passed and for the past 40 years contractors have built more energy efficient buildings in Oregon. As a result, enough energy has been conserved so that Oregon utilities could avoid building at least another 1,000 megawatts of additional generation.

I mention this because it demonstrates that the implementation of environmentally progressive legislation is frequently opposed by entrenched economic interests. But in the long run that environmental legislation pays for itself. In the case of Falls Creek vs. PGE, Falls Creek represent a proven resource that meets the Oregon policy of distributed generation. One of the purposes of distributed generation is to strengthen the electrical infrastructure in rural areas near load. Falls Creek is located in rural western Oregon where energy would otherwise be imported. So Falls Creek not only generates clean power, but strengthens rural electric infrastructure and conserves energy by reducing the line losses of imported power. If PGE wins its appeal before the PUC, then Falls Creek will shut down and the benefits that Falls Creek provides through distributed generation will vanish.

Falls Creek Provides Multiple Benefits to Rural Linn County

Since 1984 Falls Creek has paid over \$1.2 million in property taxes to Linn County serving the school, roads, fire and police protection of this rural section of Oregon. The staff at Falls Creek conducts annual tour of the project to area elementary school students, and has exposed an entire

generation of students to the benefits of renewable energy and the physics involved in its production. We also give tours to OSU engineering students, many from foreign countries.

In addition, Falls Creek paid for the upgrade (or reconditioning) of 20 miles of electric distribution line along a rural section of highway 20 east of Sweet Home. That upgrade enabled a local lumber company to restart a small lumber mill and operate it for about 10 years. The three-phase distribution line is inherently more robust than a single-phase line and has improved electrical distribution service to all of the residents and commercial interests along those lines. Falls Creek pays for the continuing maintenance of those lines. If Falls Creek went out of business, there is a good chance those 20 miles of three-phase distributions will devolve back into a single-phase line.

Falls Creek assists the Forest Service. Falls Creek is located Forest Service land and pays portions of Forest Service road maintenance, this reduces public costs of maintaining those roads. In addition, the Falls built a pond to pool water and divert it into its penstock. That pond creates fish and riparian habitat and also acts as a source of water in the mountains where helicopters during fire season can dip their buckets and drop the water on fires.

In short, even though Falls Creek is a small company we are an integral part of Sweet Home and the rural community east of Sweet Home. If Falls Creek went out of business 20 miles of rural electric distribution system could devolve, there would be no more elementary school and engineering school field trips to the site, Linn County and its schools, roads, police and fire services would lose property tax money, the Forest Service would lose a maintenance partner. Most importantly, Oregon would lose an average of 15,500 megawatts hours a year from a plant that could last another 60 years, since Falls Creek was built to last 100 years in 1984 and is impeccably maintained.

Hydropower is More Predicable than Wind or Solar

Unlike wind and solar resources, Falls Creek is a hydroelectric power resource and as such produces continuous power from roughly November 1st to July 1st each year. This kind of power does not require peaking power back-up that more variable forms of generation such as wind and solar require. In addition, Falls Creek is already built and proven, whereas the other projects that PGE is trying to limit are greenfield projects which still face permitting and construction risk. This translates into planning risks for PGE. Falls Creek does not have those planning risks.

PGE's Illegal Actions

When Falls Creek sent in its application to PGE on June 6th, it expected that PGE would be firm in its negotiations, but it also expected PGE to act honorably. From the beginning PGE seemed

not to care about Falls Creek, or even to read its submittals. PGE's first form letter back to Falls Creek set this pattern. First, PGE stated that Falls Creek was a 10 MW system, even though the Falls Creek Hydro has a 4.1 MW nameplate capacity, suggesting that PGE had not read even the first page of Falls Creek's submittal. Second, PGE stated it received the Falls Creek submittal on June 9, when Federal Express documents proved PGE receive it on June 6. This was PGE's first attempt at delay.

This pattern continued. On June 12, PGE requested that Falls Creek Hydro reformat its information. On June 26, PGE stated that it would not send a draft PPA until Falls Creek Hydro selected an acceptable point of delivery, which requires Falls Creek to pay additional transmission charges. After multiple unnecessary submissions (i.e. not required by Schedule 201) and repeated requests from Falls Creek Hydro, PGE finally sent the first draft PPA on July 7.

The draft PPA provided by PGE, on July 7, contained two mistakes that did not match the information submitted by Falls Creek Hydro. First, PGE stated that the project was in Lane County even though both of the project's address in Cascadia, Oregon and its geographic coordinates are in Linn County. Second, PGE stated that the project has a nameplate 4.9 MW capacity instead of 4.1 WM. Falls Creek Hydro has a maximum installed capacity of 4.9 MW, but its nameplate capacity, which is what PGE requested, is 4.1 MW. These mistakes caused additional delay in the negotiations with Falls Creek Hydro.

Schedule 201 allows a QF to move directly from draft to executable PPA, but PGE has insisted upon providing unnecessary versions, which has added additional 15 business day periods.

The final draft PPA provided by PGE, on August 3, contained PGE's standard language and indicated that in 15 business days, PGE would send an executable contract, and that once Falls Creek Hydro would get the avoided cost prices in effect when it signed its executable draft.

On August 4, only one day later, PGE requested lower prices from the Commission. When Falls Creek became aware of PGE's filing, it executed the final draft PPA, recommitted itself to PGE, and filed its complaint on August 7.

On August 25, PGE informed Falls Creek Hydro that it was "committed" to entering into a PPA with Falls Creek Hydro, however, there are two pending proceedings before the Commission which will determine the applicable rates and process to use in the final executable PPA between PGE and Falls Creek Hydro.

Conclusion

This is really a story of a small company, Falls Creek Hydro, who follows the rules, against a big company, PGE, who doesn't follow the rules. For 33 years Falls Creek has been an award-

winning generator of clean energy. Falls Creek has been a good neighbor and small, important part of Linn County. We have improved the electric infrastructure, contributed to property taxes, educated its children, and helped the local forest service. As a business, Falls Creek Hydro reflects the values of its owner and its employees: honest people who work with others in our community. We do not have deep pockets and cannot pay for a prolonged and extensive litigation.

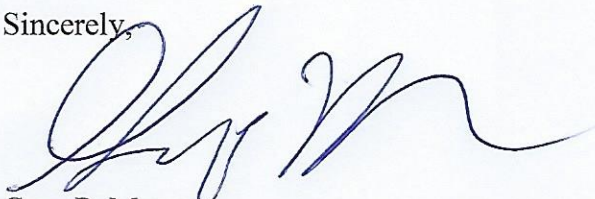
On the other hand, PGE, which is one of the largest utilities in Oregon, has published prices and procedures but has chosen not to follow them. Falls Creek has attempted to negotiate in good faith whereas PGE acted in bad faith and never intended to sign a contract with Falls Creek Hydro, even knowing that Falls Creek would go out of business with PGE's lower prices.

Falls Creek therefore requests the Commission require PGE to follow its Schedule 201 process, and sign a PPA with Falls Creek Hydro with avoided cost prices in effect on July 20 when PGE should have presented Falls Creek with an executable contract.

Falls Creek is concerned that PGE is attempting to manipulate the Commission processes to avoid its PURPA obligations. The Commission should insist that PGE maintain ethical negotiations with QFs throughout the Commission processes, and confirm that PGE's attempt to deceive and defraud companies like Falls Creek will not be tolerated by the Commission.

Thank you for considering this request.

Sincerely,



Gary P. Marcus
President, Frontier Technology, Inc., General Partner
Falls Creek H.P., Limited Partnership