

June 27, 2011

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

Public Utility Commission of Oregon  
550 Capital Street NE, Ste 215  
Salem, OR 97301-2551

Attention: Filing Center

**RE: Advice No. 11-011  
Schedule 37 – Avoided Cost Purchases from Qualifying Facilities  
(10,000 kW or less)**

Enclosed for filing are an original and five copies of proposed revised tariff pages associated with Tariff P.U.C. OR No. 36 of PacifiCorp d/b/a Pacific Power. Specifically, PacifiCorp proposes revisions to PacifiCorp's Oregon Tariff Schedule 37 – Avoided Cost Purchases from Qualifying Facilities (10,000 kW or less). PacifiCorp also submits proposed revisions to Section 2.1 of the associated standard power purchase agreements. PacifiCorp respectfully requests an effective date of July 27, 2011 for these tariff sheets and replacement pages for standard contracts.

**A. Description of Filing**

In this filing, PacifiCorp revises Schedule 37 and associated standard contracts to clarify that once a standard contract is entered into between PacifiCorp's merchant function (Merchant) and a Qualifying Facility (QF), Merchant applies to PacifiCorp's transmission function (Transmission) to designate the QF as a network resource. This is necessary so that the net output from the QF can be moved from the point of delivery on PacifiCorp's system to PacifiCorp load by means of the network transmission service that Transmission allocates to Merchant. This filing further revises Schedule 37 and associated standard contracts to clarify that, should the network resource designation issued by Transmission note that additional transmission from another provider's system will be required to move any of the QF's output to load, the QF owner will be given an opportunity to agree to pay for such additional transmission. If the QF owner refuses to agree to pay for such additional transmission, or if the additional transmission is not available, the Schedule 37 power purchase agreement will terminate unless the parties can reach a mutually agreeable alternative resolution.

The purpose of these revisions is to prevent a circumstance where PacifiCorp is required to pay full published avoided cost rates under Schedule 37 and required to pay the cost of additional transmission made necessary by the QF's point of delivery. As discussed in the enclosed memorandum in support of this advice filing, such a result would conflict with the Public Utility Regulatory Policies Act of 1978 (PURPA) and with the Federal Energy Regulatory

Commission's regulations implementing PURPA by requiring PacifiCorp to pay more than its full avoided cost for QF output.

This tariff filing is supported by affidavits and exhibits from the following PacifiCorp witnesses:

- Bruce Griswold, Director of Short Term Origination, PacifiCorp (Merchant)
- Dennis Desmarais, Director Transmission Services, PacifiCorp (Transmission)

This tariff filing is further supported by the enclosed memorandum of law discussing the need for and impact of the proposed tariff revisions.

PacifiCorp notes that it has received multiple pending requests for Schedule 37 power purchase agreements that are likely to require additional transmission and will therefore implicate the revisions proposed in this advice filing. PacifiCorp respectfully requests that the enclosed tariff sheets be allowed to become effective on July 27, 2011. As discussed in the memorandum of law, if the Commission decides to open an investigation regarding this advice filing, then the Company requests that the tariff sheets be allowed to go into effect on a provisional basis until the investigation is completed.

PacifiCorp has provided notice of Advice No. 11-011 to all small QFs (10 MW or less) with a pending application for a Schedule 37 PPA or with a pending application to interconnect with PacifiCorp's Oregon system. PacifiCorp has also posted notice of Advice No. 11-011 on the portion of its website addressing PacifiCorp's QF program. A copy of the notice is enclosed as Exhibit C to the Affidavit of Bruce Griswold.

## **B. Tariff Sheets**

First Revision of Sheet No. 37-10	Schedule 37	Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or less
First Revision of Sheet No. 37-11	Schedule 37	Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or less
First Revision of Sheet no. 37.12	Schedule 37	Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or less

## **C. Replacement Pages in Standard Power Purchase Agreement**

Oregon Standard New Qualifying Facility Power Purchase Agreement, Section 2.1

Oregon Standard Off-System Qualifying Facility Power Purchase Agreement, Section 2.1

Oregon Standard Non-Firm Qualifying Facility Power Purchase Agreement, Section 2.1

Oregon Standard New Qualifying Facility with Mechanical Availability Generation (MAG)  
Power Purchase Agreement, Section 2.1

Oregon Standard Existing Qualifying Facility Power Purchase Agreement, Section 2.1

**D. Correspondence**

PacifiCorp respectfully requests that all communications related to this filing be addressed to:

PacifiCorp Oregon Dockets  
825 NE Multnomah Street, Ste 2000  
Portland, OR 97232  
[oregondockets@pacificorp.com](mailto:oregondockets@pacificorp.com)

Jordan A. White  
Legal Counsel  
1407 W North Temple, Ste 320  
Salt Lake City, UT 84116  
[jordan.white@pacificorp.com](mailto:jordan.white@pacificorp.com)

Jeffrey S. Lovinger  
Kenneth E. Kaufmann  
Lovinger Kaufmann LLP  
825 NE Multnomah, Ste 925  
Portland, OR 97232  
[lovinger@lklaw.com](mailto:lovinger@lklaw.com)  
[kaufmann@lklaw.com](mailto:kaufmann@lklaw.com)


Additionally, PacifiCorp respectfully requests that all data requests regarding this matter be addressed to:

By e-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232

Please direct any informal inquiries to Joelle Steward, Regulatory Manager, at (503) 813-5542.

Sincerely,

  
Andrea L. Kelly  
Vice President, Regulation

Enclosures

**B. Procedures (continued)**

5. After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
  
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties and will be subject to modification after execution as provided in paragraph 7, below.
  
7. The prices and other terms and conditions in an executed power purchase agreement with a QF over 100 kW will be contingent upon PacifiCorp Transmission approving designation of the QF as a Network Resource under PacifiCorp Transmission's FERC Electric Tariff Volume No. 11 Pro Forma Open Access Transmission Tariff and as further provided in this paragraph 7.
  - (a) PacifiCorp Commercial and Trading will submit to PacifiCorp Transmission a request for Network Resource designation of the QF within five business days of the later of (i) execution of the power purchase agreement by both parties or (ii) the QF owner providing the Company with QF information necessary to submit a request.
  
  - (b) If in designating a QF as a Network Resource, PacifiCorp Transmission identifies a need for additional transmission service (other than the Network Integration Transmission Service for which the QF is designated a Network Resource) in order for the Company to use the QF's net output to serve the Company's network load, then the owner will have 15 business days from the date of the Network Resource designation to agree to pay all costs incurred to any third-party transmission provider for such additional transmission for the duration of the power purchase agreement. If available, such additional transmission will be acquired by the Company in the form of long-term firm point-to-point service in the capacity identified in the Network Resource status designation rounded up to the nearest whole megawatt.

(N)

(N)

(M) to  
37.11

(continued)

**B. Procedures (continued)**

(c) If the owner does not agree within the 15-business-day period to pay for such additional transmission, or if such additional transmission is not timely available in the form of long-term firm point-to-point service, and the parties do not reach a mutually agreeable alternative solution within the 15-business-day period, the power purchase agreement will terminate at no fault of either party. In the event of such a termination, the QF may seek a power purchase agreement under PacifiCorp's Oregon Tariff Schedule 38 notwithstanding the QF's nameplate capacity of 10,000 kW or less.

(N)  
|  
(N)

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(M) from  
37.10

(M) from  
37.10

**A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

(M) to  
37.11

(continued)

**II. Process for Negotiating Interconnection Agreements (continued)  
B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

(M) from  
37.11

(M) from  
37.11

**Example of Gas Pricing Options given Assumed Gas Prices ¢/kWh**

Banded Gas Market Index												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Gas Market Index		Assumed Gas Price \$/MMBtu	Actual Energy Price	Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price	Off-Peak Price	On-Peak Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
						(e) x 0.715			(b) + (g)	(a) + (i)		
2014	1.86	1.38	4.25	5.20	\$3.00	2.15	4.25	Floor	5.63	7.49	6.10	7.96
					\$5.00	3.58	4.25	Floor	5.63	7.49		
					\$7.00	5.01	5.01	Actual	6.39	8.25		
					\$9.00	6.44	5.20	Ceiling	6.58	8.44		
					\$12.00	8.58	5.20	Ceiling	6.58	8.44		

Gas Market Method												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Fuel Index		Assumed Gas Price \$/MMBtu	Actual Energy Price	Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price	Off-Peak Price	On-Peak Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
						(e) x 0.715			(b) + (f)	(a) + (i)		
2014	1.86	1.38	Not Relevant		\$3.00	2.15	Not Relevant		3.53	5.39	6.10	7.96
					\$5.00	3.58			4.96	6.82		
					\$7.00	5.01			6.39	8.25		
					\$9.00	6.44			7.82	9.68		
					\$12.00	8.58			9.96	11.82		

**B. Procedures (continued)**

5. After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties and will be subject to modification after execution as provided in paragraph 7, below.
7. The prices and other terms and conditions in an executed power purchase agreement with a QF over 100 kW will be contingent upon PacifiCorp Transmission approving designation of the QF as a Network Resource under PacifiCorp Transmission's FERC Electric Tariff Volume No. 11 Pro Forma Open Access Transmission Tariff and as further provided in this paragraph 7.
- (a) PacifiCorp Commercial and Trading will submit to PacifiCorp Transmission a request for Network Resource designation of the QF within five business days of the later of (i) execution of the power purchase agreement by both parties or (ii) the QF owner providing the Company with QF information necessary to submit a request.
- (b) If in designating a QF as a Network Resource, PacifiCorp Transmission identifies a need for additional transmission service (other than the Network Integration Transmission Service for which the QF is designated a Network Resource) in order for the Company to use the QF's net output to serve the Company's network load, then the owner will have 15 business days from the date of the Network Resource designation to agree to pay all costs incurred to any third-party transmission provider for such additional transmission for the duration of the power purchase agreement. If available, such additional transmission will be acquired by the Company in the form of long-term firm point-to-point service in the capacity identified in the Network Resource status designation rounded up to the nearest whole megawatt.
- (c) If the owner does not agree within the 15-business-day period to pay for such additional transmission, or if such additional transmission is not timely available in the form of long-term firm

(continued)

**II. ~~Process for Negotiating Interconnection Agreements~~**

~~[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]~~

~~In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.~~

~~Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).~~

(continued)



**B. Procedures (continued)**

(c) If the owner does not agree within the 15-business-day period to pay for such additional transmission, or if such additional transmission is not timely available in the form of long-term firm point-to-point service, and the parties do not reach a mutually agreeable alternative solution within the 15-business-day period, the power purchase agreement will terminate at no fault of either party. In the event of such a termination, the QF may seek a power purchase agreement under PacifiCorp's Oregon Tariff Schedule 38 notwithstanding the QF's nameplate capacity of 10,000 kW or less.

**II. Process for Negotiating Interconnection Agreements**

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**B. Procedures**

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

~~Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.~~

(continued)

**B. Procedures**

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**Example of Gas Pricing Options given Assumed Gas Prices ¢/kWh**

**Banded Gas Market Index**

Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Gas Market Index		Assumed Gas Price \$/MMBtu	Actual Energy Price	Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price
			Floor 90%	Ceiling 110%			Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
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					\$5.00	3.58	4.25	Floor	5.63	7.49		
					\$7.00	5.01	5.01	Actual	6.39	8.25		
					\$9.00	6.44	5.20	Ceiling	6.58	8.44		
					\$12.00	8.58	5.20	Ceiling	6.58	8.44		

**Gas Market Method**

Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Fuel Index		Assumed Gas Price \$/MMBtu	Actual Energy Price	Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price
			Floor 90%	Ceiling 110%			Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
2014	1.86	1.38	Not Relevant		\$3.00	2.15	Not Relevant		3.53	5.39	6.10	7.96
					\$5.00	3.58			4.96	6.82		
					\$7.00	5.01			6.39	8.25		
					\$9.00	6.44			7.82	9.68		
					\$12.00	8.58			9.96	11.82		

**PACIFICORP ADVICE NO. 11-011**  
**SCHEDULE 37 – AVOIDED COST PURCHASES FROM**  
**QUALIFYING FACILITIES (10,000 KW OR LESS)**

Oregon Standard Existing Qualifying Facility  
Power Purchase Agreement, Section 2.1

June 27, 2011

additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.33 **"Required Facility Documents"** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for operation, and maintenance of the Facility consistent with the terms of this Agreement and requested in writing by PacifiCorp, including without limitation those set forth in **Exhibit C**.

1.34 **"Schedule 37"** means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit F**.

1.35 **"Termination Date"** shall have the meaning set forth in Section 2.4.

## **SECTION 2: TERM; EFFECTIVE DATE**

2.1 After execution by both Parties, this Agreement shall become effective on the Effective Date. If the Facility Capacity Rating exceeds 100 kW, the Parties' duties and obligations in this Agreement (including sale and purchase of Net Output) are conditioned upon PacifiCorp Transmission approving Network Resource status of the Facility under PacifiCorp Transmission's Open Access Transmission Tariff in conformance with the conditions in paragraph I.B.7 of Schedule 37. If PacifiCorp Transmission denies Network Resource status, this Agreement shall terminate 15 business days after such denial at no fault to either Party unless the Parties agree in writing upon measures to cure the deficiency and resubmit the Network Resource request. If PacifiCorp Transmission approves Network Resource status but identifies, at the time of approval, a need for additional transmission service (as provided in paragraph I.B.7(b) of Schedule 37), this Agreement will terminate at no fault to either Party 15 business days after the date of the Network Resource approval unless one of the following occurs within the 15-business-day period:

- 2.1.1 Such additional transmission is available for purchase and Seller in its sole discretion agrees to pay for such additional transmission (including the costs of any deposits and study costs) on a monthly basis for the term of this Agreement; or alternatively,
- 2.1.2 The Parties mutually agree on an alternative solution to the need for such additional transmission. Nothing in this Agreement obligates either Party to attempt to negotiate a mutually agreeable alternative solution.

Any agreement under Section 2.1.1 or Section 2.1.2 shall be in the form of a written amendment to this Agreement.

**PACIFICORP ADVICE NO. 11-011**  
**SCHEDULE 37 – AVOIDED COST PURCHASES FROM**  
**QUALIFYING FACILITIES (10,000 KW OR LESS)**

Oregon Standard New Qualifying Facility  
Power Purchase Agreement, Section 2.1

June 27, 2011

1.36 “**Scheduled Commercial Operation Date**” shall have the meaning set forth in Recital C.

1.37 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.38 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.39 “**Termination Date**” shall have the meaning set forth in Section 2.4.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (“**Effective Date**”). If the Facility Capacity Rating exceeds 100 kW, the Parties’ duties and obligations in this Agreement (including sale and purchase of Net Output) are conditioned upon PacifiCorp Transmission approving Network Resource status of the Facility under PacifiCorp Transmission’s Open Access Transmission Tariff in conformance with the conditions in paragraph I.B.7 of Schedule 37. If PacifiCorp Transmission denies Network Resource status, this Agreement shall terminate 15 business days after such denial at no fault to either Party unless the Parties agree in writing upon measures to cure the deficiency and resubmit the Network Resource request. If PacifiCorp Transmission approves Network Resource status but identifies, at the time of approval, a need for additional transmission service (as provided in paragraph I.B.7(b) of Schedule 37), this Agreement will terminate at no fault to either Party 15 business days after the date of the Network Resource approval unless one of the following occurs within the 15-business-day period:

2.1.1 Such additional transmission is available for purchase and Seller in its sole discretion agrees to pay for such additional transmission (including the costs of any deposits and study costs) on a monthly basis for the term of this Agreement; or alternatively,

2.1.2 The Parties mutually agree on an alternative solution to the need for such additional transmission. Nothing in this Agreement obligates either Party to attempt to negotiate a mutually agreeable alternative solution.

Any agreement under Section 2.1.1 or Section 2.1.2 shall be in the form of a written amendment to this Agreement.

2.1 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.1.1 By \_\_\_\_\_, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

**PACIFICORP ADVICE NO. 11-011**  
**SCHEDULE 37 – AVOIDED COST PURCHASES FROM**  
**QUALIFYING FACILITIES (10,000 KW OR LESS)**

Oregon Standard Off-System Qualifying Facility  
Power Purchase Agreement, Section 2.1

June 27, 2011



or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit G**.

1.39 “**Scheduled Commercial Operation Date**” shall have the meaning set forth in Recital C.

1.40 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.41 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.42 “**Termination Date**” shall have the meaning set forth in Section 2.4.

1.43 “**Transmission Agreement**” means the agreement (or contemporaneous agreements) between Seller and the Transmitting Entity providing for Seller’s uninterrupted right to transmit Net Output to the Point of Delivery.

1.44 “**Transmitting Entity(s)**” means \_\_\_\_\_, the (non-PacifiCorp) operator of the transmission system at the Point of Delivery.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (“**Effective Date**”). If the Facility Capacity Rating exceeds 100 kW, the Parties’ duties and obligations in this Agreement (including sale and purchase of Net Output) are conditioned upon PacifiCorp Transmission approving Network Resource status of the Facility under PacifiCorp Transmission’s Open Access Transmission Tariff in conformance with the conditions in paragraph I.B.7 of Schedule 37. If PacifiCorp Transmission denies Network Resource status, this Agreement shall terminate 15 business days after such denial at no fault to either Party unless the Parties agree in writing upon measures to cure the deficiency and resubmit the Network Resource request. If PacifiCorp Transmission approves Network Resource status but identifies, at the time of approval, a need for additional transmission service (as provided in paragraph I.B.7(b) of Schedule 37), this Agreement will terminate at no fault to either Party 15 business days after the date of the Network Resource approval unless one of the following occurs within the 15-business-day period:

2.1.1 Such additional transmission is available for purchase and Seller in its sole discretion agrees to pay for such additional transmission (including the costs of any deposits and study costs) on a monthly basis for the term of this Agreement; or alternatively,

2.1.2 The Parties mutually agree on an alternative solution to the need for such additional transmission. Nothing in this Agreement obligates either Party to attempt to negotiate a mutually agreeable alternative solution.

Any agreement under Section 2.1.1 or Section 2.1.2 shall be in the form of a written amendment to this Agreement.

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**SCHEDULE 37 – AVOIDED COST PURCHASES FROM**  
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Oregon Standard New Qualifying Facility  
with Mechanical Availability Generation (MAG)  
Power Purchase Agreement, Section 2.1

June 27, 2011

1.38 “**Scheduled Commercial Operation Date**” shall have the meaning set forth in Recital C.

1.39 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.40 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.41 “**Sufficient Wind**” means any hour during which the average wind speed is equal to or greater than the manufacturer’s rated Cut-in Speed for the wind turbines comprising the Facility.

1.42 “**Termination Date**” shall have the meaning set forth in Section 2.4.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (“**Effective Date**”). If the Facility Capacity Rating exceeds 100 kW, the Parties’ duties and obligations in this Agreement (including sale and purchase of Net Output) are conditioned upon PacifiCorp Transmission approving Network Resource status of the Facility under PacifiCorp Transmission’s Open Access Transmission Tariff in conformance with the conditions in paragraph I.B.7 of Schedule 37. If PacifiCorp Transmission denies Network Resource status, this Agreement shall terminate 15 business days after such denial at no fault to either Party unless the Parties agree in writing upon measures to cure the deficiency and resubmit the Network Resource request. If PacifiCorp Transmission approves Network Resource status but identifies, at the time of approval, a need for additional transmission service (as provided in paragraph I.B.7(b) of Schedule 37), this Agreement will terminate at no fault to either Party 15 business days after the date of the Network Resource approval unless one of the following occurs within the 15-business-day period:

2.1.1 Such additional transmission is available for purchase and Seller in its sole discretion agrees to pay for such additional transmission (including the costs of any deposits and study costs) on a monthly basis for the term of this Agreement; or alternatively,

2.1.2 The Parties mutually agree on an alternative solution to the need for such additional transmission. Nothing in this Agreement obligates either Party to attempt to negotiate a mutually agreeable alternative solution.

Any agreement under Section 2.1.1 or Section 2.1.2 shall be in the form of a written amendment to this Agreement.

2.1 **Time is of the essence for this Agreement**, and Seller’s ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

**PACIFICORP ADVICE NO. 11-011**  
**SCHEDULE 37 – AVOIDED COST PURCHASES FROM**  
**QUALIFYING FACILITIES (10,000 KW OR LESS)**

Oregon Standard Non-Firm Qualifying Facility  
Power Purchase Agreement, Section 2.1

June 27, 2011

1.25 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.26 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.27 “**Termination Date**” shall have the meaning set forth in Section 2.4.

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2.1.1 Such additional transmission is available for purchase and Seller in its sole discretion agrees to pay for such additional transmission (including the costs of any deposits and study costs) on a monthly basis for the term of this Agreement; or alternatively,

2.1.2 The Parties mutually agree on an alternative solution to the need for such additional transmission. Nothing in this Agreement obligates either Party to attempt to negotiate a mutually agreeable alternative solution.

Any agreement under Section 2.1.1 or Section 2.1.2 shall be in the form of a written amendment to this Agreement.

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By \_\_\_\_\_, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ADVICE NO. 11-011

PACIFICORP dba PACIFIC POWER

PACIFICORP'S MEMORANDUM OF  
LAW IN SUPPORT OF ADVICE  
NO. 11-011 REVISING PACIFICORP  
OREGON TARIFF SCHEDULE 37—  
AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES (10,000  
KW OR LESS)

1           PacifiCorp, dba Pacific Power, respectfully submits this memorandum of law in  
2 support of Advice No. 11-011. The advice filing revises PacifiCorp's Oregon Tariff  
3 Schedule 37 ("Schedule 37") and associated power purchase agreements to ensure  
4 PacifiCorp is not required to pay more than its full-avoided cost when a qualifying  
5 facility ("QF") delivers generation to a PacifiCorp load pocket. In this context, a *load*  
6 *pocket* exists when generation in an isolated segment of PacifiCorp's system exceeds load  
7 and PacifiCorp must use transmission owned by another utility to move the excess  
8 generation to load. Schedule 37 currently does not address responsibility for third-party  
9 transmission costs associated with QF delivery into a PacifiCorp load pocket. To date  
10 this year, one QF has agreed and one QF has refused to pay for these third-party  
11 transmission costs. However, If PacifiCorp is required to pay both published avoided  
12 cost rates under Schedule 37 *and* the cost of third-party transmission to wheel excess QF  
13 generation out of a load pocket, then PacifiCorp would be required to pay more than its  
14 full-avoided cost for QF output—a result prohibited by the Public Utility Regulatory  
15 Policies Act of 1978 ("PURPA").<sup>1</sup>

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<sup>1</sup> *American Paper Institute v. American Electric Power*, 461 U.S. 402, 413 (1983) (affirming that under PURPA a utility's full-avoided cost is the "maximum rate that the Commission may prescribe.").

1           The revisions proposed in Advice No. 11-011 clarify that a QF seeking to sell into  
2 a load pocket under Schedule 37 must agree to pay for any third-party transmission when  
3 such transmission is needed because the addition of the QF generation will cause  
4 generation to exceed load in the pocket. After PacifiCorp and a QF execute a power  
5 purchase agreement (“PPA”), PacifiCorp’s merchant function (“PacifiCorp Merchant”) will ask  
6 PacifiCorp’s transmission function (“PacifiCorp Transmission”) to designate the  
7 QF as a *network resource* under PacifiCorp’s Open Access Transmission Tariff  
8 (“OATT”). In the process of designating the QF as a network resource, PacifiCorp  
9 Transmission will determine whether the QF is delivering output into a load pocket. If  
10 PacifiCorp Transmission determines it will be necessary for PacifiCorp Merchant to  
11 obtain third-party transmission to move QF generation out of a load pocket to load  
12 elsewhere on PacifiCorp’s system, then the QF will have 15 business days to agree to pay  
13 for such third-party transmission. If the QF refuses to agree to pay for the required third-  
14 party transmission, or if the transmission is not timely available, then the Schedule 37  
15 PPA will terminate (unless the parties can agree to another mutually satisfactory solution  
16 to the situation) and the QF can elect to seek a PPA under PacifiCorp’s Oregon Tariff  
17 Schedule 38—Avoided Cost Purchases from Qualifying Facilities (greater than 10,000  
18 kW) (“Schedule 38”).

19           PacifiCorp respectfully requests that the Public Utility Commission of Oregon  
20 (“Commission” or “OPUC”) allow the revisions proposed in Advice No. 11-011 to  
21 become effective on July 27, 2011. As discussed below, if the Commission decides to  
22 open an investigation regarding such revisions, then PacifiCorp requests that the

1 proposed tariff revisions be allowed to go into effect on a provisional basis until the  
2 investigation is completed.

## 3 **I. BACKGROUND**

### 4 **A. Load pockets in PacifiCorp's distribution system.**

5 PacifiCorp's Oregon service territory is not one continuous system.<sup>2</sup> Rather, it is  
6 composed of multiple allocated service territories—large and small—interconnected by  
7 transmission lines.<sup>3</sup> In some cases, PacifiCorp Transmission controls the transmission  
8 system interconnecting elements of PacifiCorp's larger system. In other cases,  
9 PacifiCorp purchases transmission across another utility's system in order to deliver (or  
10 export) generation to (or from) an isolated portion of PacifiCorp's system (a load pocket).  
11 If a QF delivers its output to a load pocket, and this causes generation in the pocket to  
12 exceed load, then PacifiCorp must purchase third-party transmission to move the excess  
13 generation out of the pocket (or else curtail generation in the load pocket to the extent it  
14 exceeds local load). As a result, any time a new generator causes generation within a  
15 load pocket to exceed local load, PacifiCorp will incur an additional cost to transmit the  
16 excess load pocket generation to another part of its system.<sup>4</sup>

### 17 **B. Recent small QF development in PacifiCorp load pockets.**

18 PacifiCorp's recent experience with a new QF delivering to the Dalreed load  
19 pocket illustrates the conditions described above. PacifiCorp serves a small area near

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<sup>2</sup> A map of PacifiCorp's Oregon service territory, illustrating its fragmented character, is attached as Exhibit A to the Affidavit of Bruce Griswold dated June 27, 2011.

<sup>3</sup> Because the scope and details of load pockets in PacifiCorp's system may be unique, PacifiCorp proposes changes to its Schedule 37 tariff, only, and does not seek changes to the Commission's QF regulations that might unnecessarily impact QF transactions with Portland General Electric Company or Idaho Power Company.

<sup>4</sup> Aff. Griswold ¶ 4 (June 27, 2011).



1 Arlington, Oregon, from its Dalreed substation. The substation is connected to  
2 PacifiCorp's generating resources and larger system only by transmission facilities that  
3 are owned and operated by the Bonneville Power Administration ("BPA"). Load in the  
4 Dalreed load pocket ranges from about 44 MW during summer down to less than 2 MW  
5 during the winter.<sup>5</sup>

6 In 2009, a 9.9 MW wind QF referred to as Threemile Canyon Wind 1, LLC  
7 ("Threemile"), interconnected to PacifiCorp at Dalreed and commenced delivering net  
8 output to PacifiCorp. Before the QF interconnected to Dalreed there was no generation  
9 in the Dalreed load pocket. A study by PacifiCorp using generation forecasts from the  
10 QF owner and actual historic load data at Dalreed concluded that the Threemile QF  
11 would produce excess generation (generation in the load pocket in excess of load in the  
12 pocket) from between 1,020 and 1,289 hours per year, involving between 8% and 10.5%  
13 of total Threemile output.<sup>6</sup>

14 In 2009, Threemile began commercial operation, and excess generation does  
15 occur. In 2009, peak excess generation of 7,006 kW occurred on November 6, 2009. In  
16 2010, peak excess generation of 6,380 kW occurred on November 14, 2010. In order to  
17 provide that such excess generation can be moved to load outside the Dalreed load  
18 pocket, PacifiCorp sought to purchase 8 MW of long-term PTP transmission (with  
19 rollover rights) from BPA and entered BPA's Network Open Season ("NOS") process  
20 queue in the spring of 2009. BPA will not have firm capacity available to grant this  
21 request until 2012. Because long-term firm PTP was not available PacifiCorp purchased

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<sup>5</sup> *Id.* at ¶ 10.

<sup>6</sup> *Id.* at ¶ 11.

1 8 MW of short-term firm PTP transmission from October 1, 2009 through May 31, 2010  
2 to address the period when generation could exceed load. The cost of short-term firm  
3 PTP transmission service was based on the current BPA OATT and the total cost from  
4 October 1, 2009 through May 31, 2010 was \$101,808. When 8 MW long-term firm PTP  
5 transmission is available at Dalreed, the annual cost under the current BPA OATT will be  
6 \$144,096.<sup>7</sup>

7 Delivery of QF output to Dalreed substation could theoretically reduce peak  
8 demand for BPA transmission into the Dalreed load pocket<sup>8</sup> and might thereby reduce  
9 PacifiCorp's cost to serve the Dalreed load pocket. However, actual generation and load  
10 data from 2009 and 2010 show virtually no reduction in peak demand on BPA  
11 transmission into Dalreed. This is due to the fact that the QF output was neither firm nor  
12 correlated to peak local loads. In 2010, the reduction in peak hourly demand at Dalreed  
13 was only 334 kW, saving PacifiCorp approximately \$900; in 2009, the reduction in peak  
14 hourly demand was zero.<sup>9</sup> Adding the 9.9 MW wind facility to the Dalreed load pocket  
15 has caused PacifiCorp to purchase 8 MW of BPA PTP Transmission to export generation  
16 in excess of Dalreed load while reducing imported peak demand by only about 334 kW.  
17 If PacifiCorp must pay BPA for the long-term firm PTP transmission required to export  
18 excess generation, it will pay net additional transmission costs of about \$143,000,

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<sup>7</sup> *Id.* at ¶ 12.

<sup>8</sup> PacifiCorp's transmission into Dalreed is pursuant to a pre-OATT transmission agreement with BPA. Under that agreement, wheeling charges are proportional to PacifiCorp's peak hourly use in the preceding eleven months. Therefore, if the QF generation reduced peak imports, PacifiCorp would, in theory, realize a reduction in BPA charges to wheel power into the Dalreed load pocket. *Aff. Gris*, ¶13.

<sup>9</sup> *Aff. Griswold* ¶¶ 14-16.

1 annually, above the Schedule 37 contract rates. This represents an increase in cost of  
2 approximately seven percent above published avoided cost rates.<sup>10</sup>

3 So far in 2011, five planned QFs comprising 44.8 MW of nameplate capacity  
4 have proposed to interconnect to PacifiCorp load pockets.<sup>11</sup> 44.8 MW of firm BPA  
5 Point-to-Point Transmission will be needed to ensure that net output from these planned  
6 QFs will not be curtailed when their output, combined with other local generation (if  
7 any), exceeds local load.<sup>12</sup> For the reasons discussed above, offsetting reductions in  
8 import wheeling charges (if any) arising because of the generation from these QFs will be  
9 *de minimis*. The net effect of adding the 44.8 MWs of BPA transmission required  
10 because these QF's have elected to deliver output to a load pocket will be an increase in  
11 PacifiCorp Merchant's cost to purchase the QF output of approximately \$810,540 in year  
12 1 (or \$8.16 Million net present value assuming payment of the 2012 rate for the term of  
13 each PPA, discounted at 7.17%).<sup>13</sup> There likely are more QFs planning to deliver net  
14 output to PacifiCorp load pockets, and each new generator interconnecting to a load  
15 pocket increases the likelihood and magnitude of excess generation within the load  
16 pocket.

## 17 II. DISCUSSION

### 18 A. Proposed revisions to Schedule 37 and associated standard contracts.

19 Whenever PacifiCorp Transmission evaluates a request for network resource  
20 designation under the PacifiCorp OATT, it determines if the addition of the resource will

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<sup>10</sup> *Id.* at ¶ 17.

<sup>11</sup> *Id.* at ¶¶ 5, 18-21.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at ¶¶ 20-22.

1 cause local generation to exceed local load such that third-party transmission will be  
2 required to make use of some or all of the new network resource's output.<sup>14</sup> PacifiCorp  
3 Transmission conveys this information to the party requesting network resource  
4 designation at the time it approves the network resource designation request.<sup>15</sup> The  
5 revised Schedule 37 makes use of the fact that PacifiCorp Transmission already  
6 determines the need for third-party transmission in conjunction with a request for  
7 network resource designation.

8 Paragraph I.B.7 of the revised Schedule 37 provides that, once the parties have  
9 executed a Schedule 37 PPA, PacifiCorp Merchant will apply to PacifiCorp Transmission  
10 to designate the QF as a network resource.<sup>16</sup> If PacifiCorp Transmission designates the  
11 QF as a network resource without identifying the need for any additional transmission,  
12 then the Schedule 37 PPA process is complete. However, if PacifiCorp Transmission  
13 designates the QF as a network resource but notes that additional third-party transmission  
14 is necessary to move some or all of the QF output to PacifiCorp load, then the QF will  
15 have 15 business days to agree to pay the cost of such additional transmission.<sup>17</sup> If the  
16 QF agrees to pay such costs, PacifiCorp Merchant will be required to obtain such

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<sup>14</sup> Affidavit of Dennis Desmarais ¶¶ 4-5 (June 23, 2011).

<sup>15</sup> *Id.* at ¶ 6. *See also* Exhibit A to the Affidavit of Dennis Desmarais, which provides an example of the type of Network Resource designation letter relied on under the revisions proposed to Schedule 37. Exhibit A is an actual network resource designation letter issued by PacifiCorp Transmission on June 10, 2011, which effectively notes that additional transmission in the amount of 4 megawatts will be required to wheel all of the generator's output to load.

<sup>16</sup> Any analysis of the question by PacifiCorp Transmission made in advance of a network resource designation would be merely advisory because any study performed by PacifiCorp Transmission prior to the network resource designation request is a snapshot based upon current transmission queue requests and is subject to change at any time until the transmission customer—PacifiCorp Merchant—submits and is granted a network resource designation request.

<sup>17</sup> Revised Schedule 37, ¶ I.B.7(b).

1 additional transmission if available.<sup>18</sup> If the QF refuses to pay the cost of such additional  
2 transmission, or if such additional transmission is not available to be timely acquired by  
3 PacifiCorp Merchant, then the QF's Schedule 37 PPA will terminate (unless the parties  
4 can reach a mutually agreeable alternative solution).<sup>19</sup> If the Schedule 37 PPA is  
5 terminated, the QF can seek a PPA under Schedule 38 if it so desires.<sup>20</sup> As a  
6 "dispatchability adjustment" under Schedule 38, PacifiCorp could account for any impact  
7 from delivery of QF output to a load pocket by a downward adjustment to the avoided  
8 cost rate paid to the QF.<sup>21</sup>

9 The proposed revisions to Schedule 37 also require minor modifications to  
10 PacifiCorp's standard Schedule 37 power purchase agreements. Section 2.1 of the PPAs  
11 would be modified to incorporate the additional post-execution procedures set forth in the  
12 revised Schedule 37. The revised Section 2.1 makes clear that the obligations of both  
13 parties to perform under the PPA are contingent upon: (a) the absence of any need for  
14 third-party transmission; (b) the QF's agreement to pay for third-party transmission; or  
15 (c) other mutually acceptable alternative arrangements. The proposed revisions to  
16 Section 2.1 of the standard contracts have been submitted as part of Advice No. 11-011.

17 The process proposed by PacifiCorp has several advantages. First, it brings  
18 Schedule 37 into compliance with PURPA by ensuring that PacifiCorp, and ultimately

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at ¶ I.B.7(c).

<sup>20</sup> *Id.*

<sup>21</sup> Paragraph B.2.a of Schedule 38 provides:

Dispatchability – Adjustment will reflect the ability of PacifiCorp to schedule and dispatch the Qualifying Facility as compared to the proxy resource on a forward, probabilistic basis. This adjustment will also account for the Company backing down more economic generating resources in lieu of wheeling the Qualifying Facility's power outside a load-constrained area.

1 customers, are not required to pay more than full-avoided cost for small QF output  
2 delivered into a load pocket. Second, the proposed revisions have no effect on small QFs  
3 delivering net output that will not cause local generation to exceed local load.<sup>22</sup> Third,  
4 the proposed revisions to Schedule 37 rely on an existing process—PacifiCorp  
5 Transmission’s designation of the QF as a network resource—to determine if there is a  
6 third-party transmission issue and to quantify the problem. This is an advantage because  
7 it allows the proposed revisions to Schedule 37 to address the load pocket issue without  
8 the need for any elaborate new process or a resource intensive rulemaking proceeding.

9 **B. The requested changes are consistent with the Commission’s established rule**  
10 **that the QF must pay to mitigate adverse system impacts caused by its**  
11 **interconnection.**

12 PacifiCorp noted in its testimony in Docket No. UM 1129 that the delivery of QF  
13 output into load pockets caused PacifiCorp to incur third-party transmission costs and  
14 sought to have those costs explicitly carved out as an exception to the Commission’s  
15 fixed price-approach.<sup>23</sup> The Commission neither accepted nor rejected PacifiCorp’s  
16 request at the end of Phase I, but deferred a decision until Phase II of the proceeding.<sup>24</sup>

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<sup>22</sup> The proposed changes would not apply to QFs 100kW or less, to avoid any argument that Schedule 37 does not comport with 18 C.F.R. § 292.304(c) which states, “[t]here shall be put into effect with respect to each electric utility standard rates for purchases from qualifying facilities with a design capacity of 100 kW or less.” Arguably, the proposed revisions to Schedule 37 could also be applied to QFs less than 100kW because Schedule 37 would still make published rates available to such projects on condition that they agree to pay for third-party transmission arising from QF delivery of net output to a load pocket. However, PacifiCorp has proposed exempting QFs of 100 kW or less from the revisions proposed to Schedule 37 in order to avoid any potential for dispute on this point.

<sup>23</sup> Opening Brief of PacifiCorp, Docket UM 1129 at p. 11 (December 22, 2004) (“Also, utilities should be allowed to make adjustments for project-specific integration costs, where appropriate. For example, if a 10 MW project is developed in a 5 MW load pocket, there may be integration costs associated with moving the power to a useful location on the Company’s system. Such costs should be borne by the project.”).

<sup>24</sup> *Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket UM 1129, Order No. 05-584, 39 (2005) (“Certain issues, such as integration costs, will likely be taken up during the second phase of this investigation when interconnection procedures and agreements will be addressed.”).

1 Order No. 07-360, which concluded Phase II of the UM 1129 proceeding, did not resolve  
2 who should pay the cost of third-party transmission required when a QF delivers net  
3 output to a PacifiCorp load pocket. Subsequently, the Commission conducted two  
4 rulemakings addressing QF interconnections. In Docket UM 1401 the Commission  
5 adopted rules and guidelines for interconnection of QFs larger than 20 MW nameplate  
6 capacity. The Commission found that such QFs should pay for system upgrades required  
7 to mitigate any adverse system impacts caused by the QF interconnection.<sup>25</sup> In Docket  
8 AR 521, the Commission adopted rules and guidelines for interconnection of QFs with  
9 nameplate capacity of 10 MW or less. The Commission found that QFs under 10 MW  
10 should pay for system upgrades that are “necessitated by the interconnection of a small  
11 generator facility” and “required to mitigate” any adverse system impacts “caused” by the  
12 interconnection.”<sup>26</sup> To the extent it considered the issue, the Commission in both dockets  
13 found that the QF should pay for the cost of necessary system upgrades directly caused  
14 by the QF’s interconnection.

15 Neither UM 1401 nor AR 521 addressed third-party transmission costs associated  
16 with wheeling energy from PacifiCorp load pockets under Schedule 37.<sup>27</sup> However, the

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<sup>25</sup> *Investigation into Interconnection of PURPA Qualifying Facilities With Nameplate Capacity Larger Than 20 Megawatts to a Public Utility's Transmission or Distribution System*, Docket UM 1401, Order No. 10-132, 7 (2010) (“Interconnection Customers are responsible for all costs associated with network upgrades unless they can establish quantifiable system-wide benefits, at which point the Interconnection Customer would be eligible for direct payments from the Transmission Provider in the amount of the benefit.”).

<sup>26</sup> *In the Matter of a Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket AR 521, Order No. 09-196 at 5 (2009). “Adverse system impact” is defined in OAR 860-082-0005, as “[a] negative effect caused by the interconnection of a small generator facility that may compromise the safety or reliability of a transmission or distribution system.”

<sup>27</sup> This issue was not appropriate for an interconnection rulemaking because third-party transmission involves the buyer of QF energy (PacifiCorp Merchant), as owner of the energy and purchaser of the third-party transmission provider. Furthermore, PacifiCorp Transmission could not solve this issue in the case of an off-system QF, which has no generator interconnection relationship

1 Commission’s reasoning in the interconnection dockets strongly suggests that such third-  
2 party transmission costs should be assigned to the QF because they are the direct result of  
3 QF generation and are necessary to ensure that delivery of QF net output does not  
4 adversely impact safe and reliable system operations.<sup>28</sup> Under the Commission’s  
5 reasoning set forth in AR 521 and UM 1401, the QF should be responsible for the costs  
6 of third-party transmission because such costs address safety and reliability impacts  
7 caused by the QF’s decision to deliver excess generation to a load pocket.

8 **C. Requiring PacifiCorp to pay third-party transmission costs made necessary**  
9 **by QFs receiving the Schedule 37 rate would violate PURPA.**

10 It is well settled that PURPA prohibits the Commission from requiring a utility to  
11 pay more than its full-avoided cost to purchase electricity from a QF.<sup>29</sup> Whether  
12 requiring a utility to pay Schedule 37 avoided cost rates *and* to pay for third-party  
13 transmission necessary to fully use net output violates PURPA is a matter of first  
14 impression in Oregon. However, in substantially analogous circumstances, California  
15 has determined that a standard rate QF contract violates PURPA if it is systematically

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with PacifiCorp Transmission. As a result, the allocation of such costs must take place in an agreement to which both PacifiCorp Merchant and the QF are parties.

<sup>28</sup> When a QF delivering output to a load pocket is designated as a network resource, PacifiCorp Transmission identifies whether the addition of the QF generation in the load pocket could result in more local generation than local load. Any excess generation in a load pocket would cause safety and reliability concerns which PacifiCorp must mitigate. However, because PacifiCorp lacks the right to curtail output under a Schedule 37 PPA, PacifiCorp merchant must move the excess generation out of the load pocket by purchasing third-party transmission. *Aff. Desmarais*, ¶ 6.

<sup>29</sup> *American Paper Inst. v. American Elec. Power*, 461 U.S. 402, 413 (1983) (affirming that a utility’s full-avoided cost is the “maximum rate that the Commission may prescribe.”); *So. Cal. Edison Co. v. Pub. Util. Comm’n. of Cal.*, 101 Cal. App. 4th 384, 398 (2002) (*Edison I*). A corollary to this prohibition is that a utility cannot be compelled to enter into a QF contract at prices that exceed its avoided cost. *So. Cal. Edison Co., et al.*, 70 FERC ¶ 61,215, 61,677 (1995)(“Because the California Commission’s procedure was unlawful under PURPA, Edison and San Diego cannot lawfully be compelled to enter into contracts resulting from that procedure.”).



1 biased above the utility's avoided cost.<sup>30</sup> Applying this rule, the California Court of  
2 Appeals found no PURPA violation where the plaintiff showed only that the published  
3 avoided cost at times exceeded the spot market price because that evidence did not show  
4 a systematic bias.<sup>31</sup> The same court, however, held in *Edison I* that the California Public  
5 Utilities Commission's ("CPUC") imposition of a floor on line losses chargeable to QFs  
6 regardless of the true line loss abused the CPUC's discretion and *was* a violation of  
7 PURPA.<sup>32</sup> In *Edison I*, at issue was what price adjustment due to line losses the  
8 Commission would allow to be made to purchases from QFs made at published avoided  
9 cost rates. The plaintiffs challenged the CPUC's decision to impose a floor of 0.95 for  
10 line losses assessed to all QFs relying on renewable resources for their fuel sources,  
11 regardless of their actual line losses.<sup>33</sup> The court agreed with the plaintiffs that the  
12 CPUC's 0.95 floor on QF transmission line loss factors violated PURPA:

13 Here, by setting a 0.95 floor on transmission loss factors, the  
14 Commission crossed the line. Congress has clearly indicated an intent to  
15 preempt the field in the area of energy regulation and had expressed that  
16 intent in section 824(a) of 16 of the United States Code Annotated. \* \* \*  
17 FERC has specifically stated that electric utilities are not to be required  
18 to pay more than the avoided cost for purchases of electricity from QFs.  
19 The Commission is mandated to follow and implement any rules that the  
20 FERC prescribes. The 0.95 ruling by the Commission essentially usurps  
21 the FERC's authority in determining that the ratepayers shall not support  
22 the alternative energy industry.<sup>34</sup>

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<sup>30</sup> *So. Cal. Edison Co. v. Pub. Util. Comm'n. of Cal.*, 128 Cal. App. 4th 1, 11 (Ca. Ct. App. 2005)(The CPUC found "the evidence cited by SCE only demonstrates that during some periods SRAC formula costs exceeded spot market costs . . . [t]his is not the same as systematically exceeding avoided costs in violation of PURPA, and the evidence does not show systematic and continuously excessive prices.").

<sup>31</sup> *Id.*

<sup>32</sup> *Edison I*, 101 Cal. App. 4th at 398.

<sup>33</sup> *Id.* at 399 (The CPUC justified its line loss rule by finding that "the societal benefits associated with resource diversity and environmentally preferred energy production by renewable resources merits special treatment for renewable QFs.").

<sup>34</sup> *Id.* at 398-399 (internal citations omitted).

1 As a result, the court nullified the CPUC's 0.95 floor.

2 Third-party transmission costs associated with QFs delivering to load pockets are  
3 closely analogous to the QF line loss deductions in *Edison I* because they always increase  
4 the utility's cost above the published avoided cost rate. When a QF delivery of net output  
5 to a load pocket causes local generation to exceed local load, PacifiCorp incurs a net  
6 additional cost when it must purchase third-party transmission to move excess output  
7 from a load pocket to adequate load on PacifiCorp's larger system. In short, QFs that  
8 elect to deliver output to a load pocket systematically increase transmission costs for  
9 PacifiCorp. Adding those costs on top of the published avoided cost rates required under  
10 Schedule 37 would result in PacifiCorp paying more than its full-avoided cost for net  
11 output from small QFs delivering energy to load pockets. For the same reasons the  
12 CPUC could not impose a floor on line loss deductions for QFs receiving standard  
13 published rates, PacifiCorp cannot be required to pay Schedule 37 prices *and* pay for  
14 third-party transmission necessary to move a QF's output to load.

15 **E. A prompt change to Schedule 37 is needed to avert the long-term costs that**  
16 **could result under the current Schedule 37.**

17 PacifiCorp respectfully requests that the Commission allow the proposed  
18 revisions to Schedule 37 to become effective on July 27, 2011, even if the Commission  
19 decides to initiate an investigation. If the revisions are postponed or suspended, QFs that  
20 would be affected by the revisions may rush to execute PPAs under the current Schedule  
21 37 while the proposed revisions are being investigated. Once a PPA is executed, the  
22 ambiguity in the current PPA regarding who must pay for necessary third-party  
23 transmission to move excess QF generation to load will be locked in contract—for a term

1 of up to 20 years—and the Commission will have a limited ability to determine the  
2 outcome for that QF.<sup>35</sup>

3 **1. PacifiCorp requests an effective date in 30 days in order to avoid the cost to**  
4 **PacifiCorp and its customers of being locked into long-term PPAs under the**  
5 **existing template.**

6 PacifiCorp’s request that the tariff become effective 30 days after filing is  
7 consistent with Commission regulations and the Commission’s past practice in PURPA  
8 proceedings.<sup>36</sup> The Commission has acknowledged that advice filings for PURPA tariffs  
9 are not governed by the filing and suspension requirements found in ORS 757.205 *et*  
10 *seq.*<sup>37</sup> As the Commission has stated, “[a]lthough the Commission must review and  
11 approve [PURPA] rate filings, the legislature has not mandated an investigation or  
12 hearing to determine the reasonableness of those rates.”<sup>38</sup> PacifiCorp believes that a 30-  
13 day period is short enough to prevent a rush of load pocket QFs from locking in the

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<sup>35</sup> PacifiCorp does not concede that the current Schedule 37 requires PacifiCorp to pay for third-party transmission. Indeed, PacifiCorp believes that it is not required to pay for such transmission under current Schedule 37 PPAs and reserves the right to so argue. PacifiCorp acknowledges, however, that the current Schedule 37 rules are ambiguous—that lack of clarity has, and will continue to, generate contention with small QFs.

<sup>36</sup> See OAR 860-029-0040(4)(a) (“In the same manner as rates are published for electricity sales each public utility shall file with the Commission... standard rates for purchases from qualifying facilities... to become effective 30 days after filing.”); OAR 860-029-0080(3) (“Each public utility shall... file final avoided-cost information... to be effective 30 days after filing.”); Order No. 05-584 at ordering paragraphs 2 and 5 (ordering utilities to make PURPA tariffs and standard PPAs effective 30 days after filing); OAR 860-022-0015 (all changes to tariffs must be filed at least 30 days before the effective date).

<sup>37</sup> *In the Matter of the Public Utility Commission of Oregon Investigation to Determine if Pacific Power’s Rate Revision is Consistent with the Methodologies and Calculations Required by Order 05-584*, Docket No. UM 1442, Order No. 09-427, 3 (2009) (“[ORS 757.210] is part of a statutory framework that established for the review and approval of rates *charged* by utilities for electric service. \*\*\* ORS 757.210 does not apply to the review and approval of rates *paid* by utilities to QFs, which is governed by the separate statutory framework set forth in ORS 758.505 to 758.555.” (emphasis in original)); see also, *In the matter of Public Util. Comm. of Oregon Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger than 20 Megawatts to a Public Utility’s Transmission or Distribution System*, Docket No. UM 1401, Order No. 10-132, 5 (Commission concluded that ORS 757.205 *et seq.* does not apply to PURPA tariff filings, it follows that Division 022 of the Commission’s rules, which implements ORS 757.205 *et seq.*, does not apply to PURPA tariff filings either).

<sup>38</sup> Order No. 10-132, 5.

1 existing ambiguous PPA terms. However, waiting longer to allow the Schedule 37  
2 revisions to become effective greatly increases the risk of legal disputes involving QFs  
3 that seek Schedule 37 rates without responsibility for third-party transmission costs.

4 **2. If the Commission initiates an investigation into the proposed Schedule 37**  
5 **revisions, suspension of the revisions pending investigation is not justified.**

6 Under the current Schedule 37, PacifiCorp and its customers face an impending  
7 harm. PacifiCorp may be forced to enter into PPAs with load pocket QFs. Those PPAs,  
8 with terms of up to 20 years, may expose PacifiCorp to significant third-party  
9 transmission costs. Alternatively, if the Commission allows the revisions to go into  
10 effect, some QFs may choose to postpone executing PPAs during an investigation. The  
11 effect of suspending the revision (long-term executed PPAs) has a significantly greater  
12 potential to cause harm than the effect of allowing the revisions to go into effect (creating  
13 uncertainty for some QFs for a matter of months). The Commission may, if it chooses,  
14 implement the revision temporarily in a way that minimizes potential harm to affected  
15 QFs as explained below.<sup>39</sup>

16 In the context of PURPA tariff filings, the Commission has repeatedly allowed  
17 new tariffs to go into effect during investigation. In 2005, the Commission allowed  
18 PURPA tariffs to go into effect pending investigation while essentially keeping QFs  
19 whole.<sup>40</sup> QFs that entered into contracts during the investigation were given the right to  
20 revise those contracts at the end of the investigation if they preferred the changes (if any)

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<sup>39</sup> It bears mentioning again that the proposed changes would have no effect on QFs not delivering into a PacifiCorp load pocket.

<sup>40</sup> Order No. 05-899.

1 resulting from the investigation.<sup>41</sup> Should the Commission initiate an investigation in  
2 Advice No. 11-011, PacifiCorp would not object to the Commission following the same  
3 process here (allowing the Schedule 37 revisions to go into effect and giving QFs the  
4 right to revise PPAs) in lieu of suspending the revised tariff.

5 In Advice No. 09-012, the Commission again allowed Schedule 37 revisions to  
6 become effective during an investigation into the revisions. PacifiCorp initiated Advice  
7 No. 09-012 on July 9, 2009 to update avoided cost rates under Schedule 37. PacifiCorp  
8 initially requested an effective date of August 12, 2009. After talking with Commission  
9 Staff, PacifiCorp twice set back the requested effective date—first to August 26<sup>42</sup> and  
10 then to the date the Commission approved the tariff.<sup>43</sup> On August 20, Staff recommended  
11 that the Commission approve the rate and open an investigation into the rate, subject to  
12 later revision.<sup>44</sup> The Commission approved the revised Schedule 37, subject to  
13 investigation, at the September 8, 2009 public meeting.<sup>45</sup> Before the revised Schedule 37  
14 became effective, and even in the wake of the change, PacifiCorp faced a barrage of QFs

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<sup>41</sup> In Order No. 05-1061 the Commission modified Order No. 05-899 and instructed the utilities to include the following provision in PPAs executed during the Commission's investigation of proposed changes to standard rates, terms and conditions:

The seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this agreement if the seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

*In the Matter of Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-1061, 4 (2005).

<sup>42</sup> PacifiCorp letter to Commission, Advice No. 09-012 (July 15, 2009).

<sup>43</sup> PacifiCorp letter to Commission, Advice No. 09-012 (August 25, 2009).

<sup>44</sup> Staff Report re Advice No. 09-012, 1 (August 20, 2009).

<sup>45</sup> See Order No. 09-506.

1 rushing to lock-in the old rates that exceeded PacifiCorp’s avoided cost.<sup>46</sup> The  
2 Commission concluded the investigation by affirming the validity of the new Schedule 37  
3 on December 28, 2009.<sup>47</sup>

4 **3. If the Commission postpones or suspends the revisions to Schedule 37,**  
5 **interim relief is justified.**

6 If the Commission postpones or suspends the revisions to Schedule 37, PacifiCorp  
7 respectfully requests that the Commission implement alternative temporary relief no later  
8 than 30 days from the date of this filing to avoid execution of PPAs pending an  
9 investigation. The Commission has the authority to suspend the current Schedule 37 for  
10 all QFs over 100 kW.<sup>48</sup> QFs temporarily disqualified from Schedule 37 could be directed  
11 to Schedule 38.<sup>49</sup> The Commission could achieve this by temporary rulemaking with no  
12 prior notice or hearing under authority of ORS 183.335(5) and OAR 860-001-0260.<sup>50</sup>

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<sup>46</sup> See e.g., *In the Matter of the Complaint of Swalley Irrigation Dist. v. PacifiCorp dba Pacific Power*, Docket No. UM 1438 (2009); *International Paper Co. v. PacifiCorp dba Pacific Power*, Docket No. UM 1449 (2009); *Central Oregon Irrigation Dist. v. PacifiCorp dba Pacific Power*, Docket No. UM 1438 (2009); *Farmers Irrigation Dist. v. PacifiCorp dba Pacific Power*, Docket No. UM 1441 (2009); *Energy Recovery Group, LLC v. PacifiCorp dba Pacific Power*, Docket No. UCB 44 (2010).

<sup>47</sup> Order No. 09-506 (affirming validity of rates in Advice No. 09-012 and closing investigation).

<sup>48</sup> FERC requires standard rates for QFs of 100 kW or less. 18 C.F.R. 292.304(c).

<sup>49</sup> QFs are not harmed in any cognizable legal sense if they receive avoided cost prices under Schedule 38 rather than under Schedule 37. The potential resulting harm to a QF of letting the new Schedule 37 take effect is limited to the extra effort and expense it might have to incur to negotiate an agreement under Schedule 38.

<sup>50</sup> See OAR 860-001-0260 (“Under ORS 183.335(5), the Commission may temporarily adopt, amend, or suspend a rule without prior notice of hearing or on abbreviated notice of hearing”); See also ORS 183.335(5) which provides:

Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares: (a) a statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice; (b) a citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule; (c) a statement of the need for the rule and a statement of how the rule is intended to meet the need; (d) a list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in

1 Requiring small QFs over 100 kW to use Schedule 38 while the Commission investigates  
2 this advice filing would prevent prejudice to PacifiCorp and its customers by ensuring  
3 that PacifiCorp would not be required to pay more than its full-avoided cost when  
4 purchasing QF output delivered to a load pocket.<sup>51</sup> Alternatively, OAR 860-029-0080(6)  
5 allows the Commission to suspend PURPA rates filed under OAR 860-029-0040 and  
6 notably does not require prior notice.<sup>52</sup>

7 Neither Oregon statute nor Commission rule bars the Commission from allowing  
8 the revised Schedule 37 to take effect or from granting temporary relief in one of the  
9 forms requested above. The filed rate doctrine does not bar the Commission from  
10 changing rates in advance of a hearing when those affected have notice that a change may  
11 occur.<sup>53</sup> Finally, it is instructive that both Idaho and California have held that a QF does  
12 not have a due process right to a particular published avoided cost rate.<sup>54</sup> In sum, the

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considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and(e) for an agency specified in *ORS 183.530*, a housing cost impact statement as defined in *ORS 183.534*.

<sup>51</sup> See *In the Matter of the Adoption of a Temporary Rule Regarding Reconnection of Gas Service*, Order No. 06-066 (implementing a temporary rule accelerating reconnection of gas lines after finding “failure to act promptly will result in serious harm to the public interest”).

<sup>52</sup> OAR 860-029-0080(6) provides:

(6) State review: Any data submitted by a public utility under this rule shall be subject to review and approval by the Commission. In any such review, the public utility has the burden of supporting and justifying its data. Any standard rates filed under OAR 860-029-0040 shall be subject to suspension and modification by the Commission.

<sup>53</sup> *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992) (“The filed rate doctrine simply does not extend to cases in which buyers are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service.”); see also *OXY USA, Inc. v. FERC*, 64 F.3d 679, 699 (D.C. Cir. 1995) (“The goals of equity and predictability are not undermined when the Commission warns all parties involved that a change in rates is only tentative and might be disallowed.”); *Northwest Pipeline Corp. v. FERC*, 61 F.3d 1479 (10th Cir. 1995) (echoing *Natural Gas Clearinghouse*); *Qwest Corp. v. Koppendrayner*, 436 F.3d 859, 864 (8th Cir. 2006); *Tucson Elec. Power Co. v. El Paso Elec. Co.*, 2009 U.S. Dist. LEXIS 82499, \*25.

<sup>54</sup> In *Rosebud Enterprises, Inc. v. Idaho Pub. Utils. Comm’n* the Idaho Supreme Court held that a QF developer’s due process rights do not attach to a particular avoided cost rate until the developer has

1 Commission has ample authority to act quickly to revise or suspend Schedule 37 using  
2 any of the approaches discussed, above.

3 **III. CONCLUSION**

4 The proposed revisions to Schedule 37, and to the associated standard power  
5 purchase agreements, will ensure that PacifiCorp is not required to pay more than its full-  
6 avoided cost when a QF delivers net output to a PacifiCorp load pocket. At present,  
7 Schedule 37 does not address cost responsibility for third-party transmission required to  
8 move excess QF generation out of a PacifiCorp load pocket. If PacifiCorp is required to  
9 pay published avoided cost rates under Schedule 37 *and* is required to pay the cost of  
10 third-party transmission to wheel excess QF generation out of a load pocket, then  
11 PacifiCorp will be systematically required to pay approximately seven percent more than  
12 its full-avoided cost for certain QF output—a result prohibited by PURPA. PacifiCorp  
13 respectfully requests that the Commission allow the revisions proposed in Advice No. 11-  
14 011 to become effective on July 27, 2011, even if the Commission determines to open an  
15 investigation regarding such revisions.

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established a legally enforceable obligation to sell its output to a utility at the rate in question. 131  
Idaho 1, 12 (1997) ("*Rosebud*"). In most relevant part, the *Rosebud* Court stated:


Rosebud contends that IPUC's 1994 orders gave it a property interest in the form of  
a legally enforceable obligation it was required to have to be entitled to the 1994  
rates. Because Rosebud never made a legally enforceable obligation, as discussed  
above, it never had a reasonable expectation that IPUC could not change the  
methodology for determining avoided cost rates. *Cf. Smith v. Meridian Joint Sch. Dist.*  
*No. 2*, 128 Idaho 714, 722-723, 918 P.2d 583, 591-92 (1996) (requiring more than a  
mere hope or expectation of continued employment to constitute a property  
interest). Therefore, it never had a property interest in the 1994 rates, and due  
process never attached to IPUC's consideration of the change of the 1994 rates.

In *Application of San Diego Gas & Electric Co. (U 902-E) for an Ex Parte Order Approving Modifications  
to Uniform Standard Offer No. 1 and Standard Offer No. 3*, 68 CPUC 2d 434, the CPUC noted that  
published QF rates are subject to change "at any time," and that the Commission had suspended the  
availability of standard offer contracts without evidentiary hearings in the past. *See also* OPUC Order  
No. 10-132, 5 (concluding that the Commission's implementation of PURPA is not subject to filing and  
suspension requirements applicable to retail electric tariffs, and that the Commission may determine  
the reasonableness of QF rates without an investigation or hearing).



Dated this 27<sup>th</sup> day of June 2011.

Respectfully submitted,



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Pacific Power

Jeffrey S. Lovinger, OSB 960147  
Kenneth E. Kaufmann, OSB 982672  
Lovinger Kaufmann LLP

*Attorneys for PacifiCorp*

**BEFORE THE OREGON PUBLIC UTILITY COMMISSION**

**ADVICE NO. 11-011**

**PACIFICORP dba PACIFIC POWER**

**AFFIDAVIT OF BRUCE GRISWOLD IN  
SUPPORT OF PACIFICORP'S ADVICE  
NO. 11-011**

1 I, Bruce Griswold, having been duly sworn to testify truthfully, say that:

2 1. I am an employee of PacifiCorp, dba Pacific Power. I work in  
3 PacifiCorp's Commercial & Trading (C&T) department as Director of Short-Term  
4 Origination and Qualifying Facility (QF) Contracts. My business address is 825 N. E.  
5 Multnomah, Suite 600, Portland, Oregon 97232. Commercial & Trading is the  
6 PacifiCorp merchant function responsible for the Company's electric generation and  
7 wholesale energy purchases and sales.

8 2. I have a B.S. and M.S. degree in Agricultural Engineering from  
9 Montana State University and Oregon State University, respectively. I have been  
10 employed by PacifiCorp for over twenty-five years in various positions of  
11 responsibility in retail energy services, engineering, marketing and wholesale  
12 energy services. I have also worked in private industry and with an environmental  
13 firm as a project engineer. My current responsibilities as Director of Short-term  
14 Origination and QF Contracts include negotiation and management of wholesale  
15 power supply and resource acquisition agreements as well as direct responsibility  
16 for all PacifiCorp QF power purchase agreements. I have represented PacifiCorp in  
17 multiple PURPA-related proceedings across our six-state jurisdictions, including  
18 providing testimony as well as participating as an expert witness.

1 **Nature of the Problem**

2 3. PacifiCorp's Oregon service territory is not one continuous system.  
3 Rather, it is composed of multiple allocated service territories—some large, some  
4 small—all interconnected by transmission lines. In some instances, PacifiCorp's  
5 transmission function (PacifiCorp Transmission) controls the transmission system  
6 interconnecting elements of PacifiCorp's larger system. In other cases, PacifiCorp  
7 purchases service across transmission owned by another utility (third-party  
8 transmission) in order to deliver, or export, generation to, or from, an isolated  
9 portion of PacifiCorp's service territory. PacifiCorp refers to these areas that are  
10 entirely or partially reliant on third-party transmission as *load pockets*. **Exhibit A** is  
11 a drawing showing the major PacifiCorp service territories within Oregon. It  
12 provides a visual representation of the fragmented PacifiCorp service territory that I  
13 have just described.

14 4. Any time new generation is interconnected to such a load pocket,  
15 PacifiCorp must purchase transmission out of the load pocket from a third-party  
16 transmission provider—or else curtail the local generation, if any—to the extent the  
17 new generation causes generation in a load pocket to exceed load in the pocket.  
18 Thus, any time a new generator causes generation within a load pocket to exceed  
19 load, PacifiCorp and its customers will incur an additional cost to transmit the  
20 excess load pocket generation to another part of PacifiCorp's system.

21 5. So far in 2011, PacifiCorp has received Schedule 37 PPA requests from  
22 five small QFs comprising 44.8 MW in capacity seeking to sell into Oregon load  
23 pockets where PacifiCorp load is insufficient to fully use the generation and

1 PacifiCorp therefore must move the QF's output to other network load by  
2 purchasing third-party transmission. In each of these instances, Bonneville Power  
3 Administration (BPA) owns transmission linking PacifiCorp's load pocket to other  
4 portions of PacifiCorp's system. PacifiCorp therefore can alleviate any excess  
5 generation in the load pocket caused by the proposed QFs if it can purchase firm  
6 point-to-point transmission from BPA under BPA's Open Access Transmission Tariff  
7 (OATT).

8           6. Under the BPA OATT, long-term firm point-to-point (PTP) is the only  
9 form of transmission that provides a dependable right to wheel output from a load  
10 pocket to PacifiCorp's larger system for the full term of a power purchase  
11 agreement. Firm PTP transmission can be purchased on a short-term or long-term  
12 basis where short-term is month/day/hour and long-term is a five-year  
13 commitment. Long-term firm (LTF) PTP transmission includes a right of first  
14 refusal to continue service when the current transmission service agreement  
15 expires, whereas short-term firm (STF) is generally requested on a month-to-month  
16 basis. Non-firm transmission is also available but not used for network load service  
17 because it is subject to displacement by requests by other parties for firm  
18 transmission. In the event another transmission customer wishes to purchase firm  
19 PTP transmission from BPA across the same path, if there is not enough unallocated  
20 capacity, BPA will displace the non-firm transmission with the firm PTP reservation.  
21 Therefore, in order to ensure that firm third-party transmission service will remain  
22 available over the term of the power purchase agreement, PacifiCorp purchases  
23 long-term firm PTP transmission if it is available. Under the current BPA OATT

1 effective October 1, 2009, Long-term Firm PTP transmission service (PTP-10 Point-  
2 to-Point) costs \$1.298 per kW-month; associated Ancillary Services and Control  
3 Area Services for Scheduling, System Control and Dispatch cost \$0.203 per kW-  
4 month. BPA also charges an application fee and may also collect a study fee, if it  
5 determines a study is necessary to determine if there is capacity available to grant  
6 the request. All of the information regarding BPA transmission, above, is contained  
7 in Part II of the BPA OATT, located at:

8 [http://transmission.bpa.gov/business/ts\\_tariff/](http://transmission.bpa.gov/business/ts_tariff/).

9 7. The same principles apply to load pockets served by Portland General  
10 Electric and Idaho Power Company under their OATTs. As under the BPA OATT, if  
11 PacifiCorp must move QF generation out of a load pocket served by either of these  
12 utilities, it must purchase firm PTP transmission service under that transmission  
13 provider's OATT to avoid displacement by a request for firm PTP transmission  
14 service on the same path.

15 8. Sunrise Electric Co-op and City of Ashland (where PacifiCorp also has  
16 load pockets) are not subject to the open access requirement of Federal Energy  
17 Regulatory Commission Order No. 888. If PacifiCorp required the use of either  
18 utility's facilities to move excess QF generation out of a load pocket, it would have to  
19 reach a non-OATT agreement with the transmission provider.

20 9. In all cases where a QF's delivery into a load pocket causes generation  
21 to exceed load in the load pocket and PacifiCorp needs to rely on third-party  
22 transmission to wheel excess generation out of the load pocket, PacifiCorp (and  
23 ultimately its customers) can expect to incur additional costs to secure such

1 transmission services from the third-party transmission provider. PacifiCorp's  
2 recent experience with the Threemile Canyon Wind Farm 1, LLC illustrates the  
3 incremental costs that are involved.

4 **Threemile Canyon Wind 1, LLC.**

5 10. Dalreed is a PacifiCorp load pocket near Arlington, Oregon.  
6 PacifiCorp's load at the Dalreed substation ranges from about 44 MW peak during  
7 the summer down to less than 2 MW during the winter. PacifiCorp imports energy  
8 to Dalreed across BPA transmission under the *General Transfer Agreement* between  
9 Bonneville Power Administration and PacifiCorp (BPA Contract No. DE-MS79-  
10 828P90049) dated May 4, 1982 (the "BPA GTA"). The BPA GTA makes no provision  
11 for energy exports out of the Dalreed load pocket because historically there was no  
12 generation in the load pocket requiring export.

13 11. Threemile Canyon Wind I, LLC (Threemile) is a 9.9 MW wind QF that  
14 is interconnected with PacifiCorp's Dalreed substation near Arlington. In 2009,  
15 PacifiCorp evaluated how much excess generation was likely at Dalreed, based on  
16 actual Dalreed 2006-2008 hourly load and an hourly generation forecast provided  
17 by Threemile. The study predicted excess generation conditions between 1,020 and  
18 1,289 hours per year, involving between 8% and 10.5% of total Threemile output.  
19 The study showed likely recurring periods of excess generation during winter  
20 months, necessitating the purchase of BPA firm PTP transmission to move excess  
21 generation from the Dalreed load pocket to another location on PacifiCorp's system  
22 with adequate load to absorb the Threemile output. A graph of the Dalreed load and  
23 predicted Threemile generation showing the timing and extent of expected excess

1 generation is attached as **Exhibit B**. In 2009, Threemile began commercial  
2 operation, and excess generation did occur. In 2009, peak excess generation of  
3 7,006 kW occurred on November 6, 2009. In 2010, peak excess generation of  
4 6,380 kW occurred on November 14, 2010.

5 12. In order to insure that such excess generation could be moved to load  
6 outside the Dalreed load pocket, PacifiCorp sought to purchase 8 MW of long-term  
7 firm PTP transmission (with rollover rights) from BPA and entered BPA's Network  
8 Open Season (NOS) process queue in the spring of 2009 prior to initial start-up of  
9 the wind turbines. BPA estimated it would not have firm capacity available to grant  
10 this request until 2012. Because long-term firm PTP was not available, PacifiCorp  
11 purchased 8 MW of short-term firm PTP transmission from October 1, 2009 through  
12 May 31, 2010 to address the period when generation could exceed load. The cost of  
13 short-term firm PTP transmission service, based on the then current BPA OATT,  
14 from October 1, 2009 through May 31, 2010 was \$101,808. When 8 MW long-term  
15 firm PTP transmission is available at Dalreed, the annual cost under the current BPA  
16 OATT will be \$144,096.<sup>1</sup>

17 13. In theory, the cost to export excess generation from Dalreed should be  
18 partially offset by any transmission service savings realized under the GTA billing  
19 formulae due to reduced peak imports into Dalreed. Unlike its service under the  
20 BPA OATT, BPA charges for service *into* Dalreed under the GTA are proportional to

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<sup>1</sup> As discussed in paragraph 6 above, under the current BPA OATT effective October 1, 2009, long-term firm PTP transmission service costs \$1.298 per kW-month and associated ancillary services and control area services for scheduling, system control and dispatch costs \$0.203 per kW-month. Expected annual cost for 8 MW of BPA long-term firm PTP transmission to move excess Threemile generation out of the Dalreed load pocket is therefore calculated as:  $(\$1.298/\text{kW-month} + \$0.203/\text{kW-month}) * 12 \text{ months} * 8,000 \text{ kW} = \$144,096$ .

1 PacifiCorp's peak hourly load demand in the current or preceding 11 months.  
2 Therefore, if the QF generation reduced peak imports, PacifiCorp might realize a  
3 reduction in transmission service charges into the load pocket.

4 14. In practice, the amount of savings realized has been minimal. I  
5 compared actual hourly generation data from Threemile in 2009 and 2010 to actual  
6 load data at Dalreed during the same period. By subtracting Threemile Canyon  
7 generation from Dalreed load, I calculated what imports to Dalreed would have been  
8 without the Threemile project. I then compared actual 2009 and 2010 hourly  
9 Dalreed demand with the calculated amounts to determine how much the Threemile  
10 project actually reduced peak demand.

11 15. In 2009, there was no reduction in peak hourly demand and therefore  
12 no savings under the BPA GTA. Dalreed experienced its annual peak hour in June  
13 2009, before Threemile was commercial, and under the ratchet billing formulae, the  
14 June 2009 peak was the governing billing determinant for the next 11 months.

15 16. In 2010, Threemile reduced the annual peak hour demand at Dalreed  
16 by approximately 334 kW. A peak hourly demand of 43,742 kW occurred at 6PM  
17 (HE 19:00) on August 1, 2010. Without Threemile's contribution to Dalreed, the  
18 annual peak hour demand would have been 44,076 kW, or 334 kW greater, at 10AM  
19 (HE 11:00) on August 18, 2010. Because the August 1 peak hourly demand has  
20 remained the billing determinant through May 2011, one could credit Threemile  
21 with lowering the ratchet demand by 334 kW for 10 months—a savings of \$900.13.

22 17. Compared to the \$101,808 annual cost PacifiCorp has incurred for  
23 short-term firm transmission out of Dalreed, or the \$144,096 annual cost PacifiCorp



1 expects to incur once long-term firm transmission out of Dalreed is available, the  
2 annual \$900 reduction to import costs is negligible. Adding the 9.9 MW wind facility  
3 to the Dalreed load pocket has had a net effect of increasing PacifiCorp Merchant's  
4 annual power costs for that facility by about \$101,000 above the Schedule 37  
5 avoided cost rates and will increase such costs by about \$143,000 per year when  
6 BPA awards PacifiCorp long-term firm PTP transmission service.

### 7 **Pending Schedule 37 PPA Applications**

8 18. On May 23, 2011, my office received a request for four, 10 MW, 20-  
9 year Schedule 37 standard PPAs. Although the projects are owned by the same  
10 owner and developed at the same time by the same developer, the owner and  
11 developer have represented that their projects qualify for Schedule 37 under the  
12 partial stipulation approved by the Commission in Docket UM 1129.<sup>2</sup>

13 19. In order to use all the power from these projects, PacifiCorp Merchant  
14 expects that it will, at times, need to move up to 40 MW to load across transmission  
15 owned by BPA.

16 20. The cost of the 40 MW of BPA long-term firm PTP transmission  
17 service would be \$720,480<sup>3</sup> per year in 2012 at current BPA OATT rates. If that rate  
18 remained unchanged, the net present value of that expense discounted at 7.17  
19 percent<sup>4</sup> over the life of a 20-year PPA, is \$7,532,000.

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<sup>2</sup> PacifiCorp Merchant will perform its own diligence to verify that the proposed projects meet the eligibility requirements of the Partial Stipulation.

<sup>3</sup> Expected annual cost for 40 MW of BPA long-term firm PTP transmission to move excess generation from the four proposed QFs out of a load pocket is calculated as:  $(\$1.298/\text{kw-month} + \$0.203/\text{kw-month}) * 12 \text{ months} * 40,000 \text{ kW} = \$720,480$ .

<sup>4</sup> A 7.17 percent discount rate is PacifiCorp's weighted average cost of capital.

1           21.    My office is also processing a request for a Schedule 37 standard PPA  
2 for a 10-year, 4.8 MW biofuel QF. In order to use all the power from this project,  
3 PacifiCorp Merchant expects that it will, at times, need to move up to 4.8 MW to load  
4 across transmission owned by BPA. This QF has agreed to pay for 5 MW of BPA  
5 long-term firm PTP transmission necessary to export its generation elsewhere on  
6 PacifiCorp's system. The cost of the 5 MW of BPA long-term firm PTP transmission  
7 service would be \$90,060<sup>5</sup> per year in 2012 at current BPA OATT rates. If that rate  
8 remained unchanged, the net present value of that expense discounted at 7.17%  
9 over the life of a 10-year PPA, is \$627,603.

10           22.    The 44.8 MW of proposed new QF output discussed above in  
11 paragraph 18 through paragraph 21, will necessitate a \$810,540<sup>6</sup> increase in  
12 transmission costs in year 1. The net present value of this combine cost would be  
13 \$8,159,603.<sup>7</sup>

14    **Additional Information**

15           23.    The document attached as **Exhibit C** to this Affidavit is a true copy of a  
16 notice letter sent by PacifiCorp, postmarked on the date Advice No. 11-011 was filed  
17 with the Commission and giving notice of the filing to all small QFs (10 MW or less)  
18 currently in PacifiCorp Transmission's interconnection queue or with open  
19 applications for an Oregon Schedule 37 Standard PPA. On the same day, PacifiCorp

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<sup>5</sup> Expected annual cost for 5 MW of BPA long-term firm PTP transmission to move excess generation from the proposed QF out of a load pocket is calculated as:  $\$1.298/\text{kW-month} + \$0.203/\text{kW-month}) * 12 \text{ months} * 5000 \text{ kW} = \$90,060$ .

<sup>6</sup> Calculated by adding the annual cost in paragraph 20 and the annual cost in paragraph 21:  $\$720,480 + \$90,060 = \$810,540$ .

<sup>7</sup> Calculated by adding the net present value in paragraph 20 and the net present value in paragraph 21:  $\$7,532,000 + \$627,603 = \$8,159,603$ .

- 1 also posted notice of Advice No. 11-011 on the portion of its website addressing
- 2 PacifiCorp's QF program.

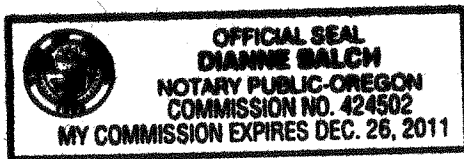
DATED: June 27, 2011.



Bruce Griswold  
Director of Short-Term Origination and  
Qualifying Facility Contracts  
PacifiCorp

State of Oregon            )  
  ) ss.  
County of Multnomah    )

I, Dianne Balch, a notary public, do hereby certify that on this 27<sup>th</sup> day of June, 2011, personally appeared before me Bruce Griswold, who, being by me first duly sworn, declared that he made his mark on the foregoing instrument, and that the statements therein contained are true.



Dianne Balch  
Notary public in and for  
the State of Oregon  
My Commission Expires  
December 26, 2011

**EXHIBIT A**

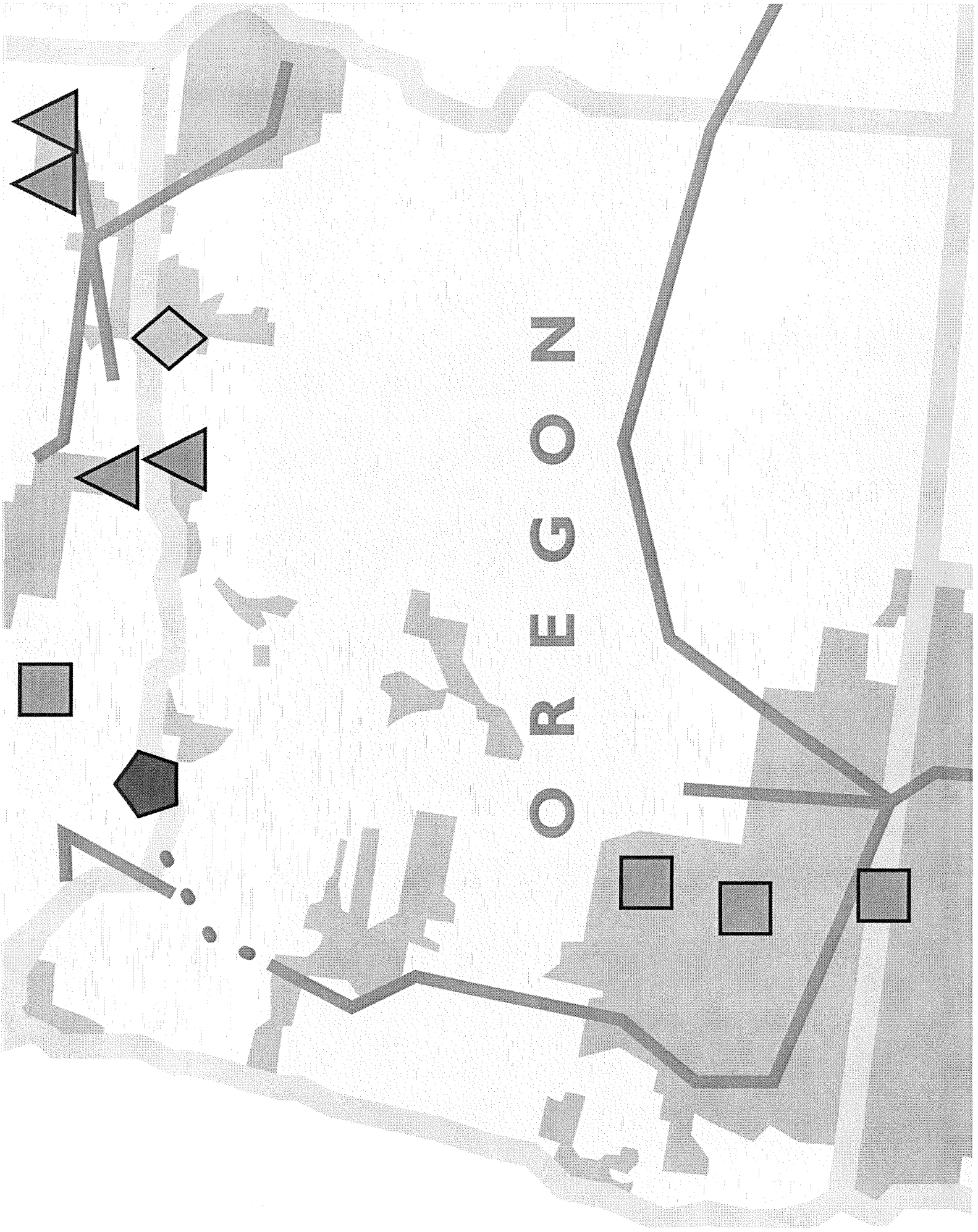
**to**

**AFFIDAVIT OF BRUCE GRISWOLD  
IN SUPPORT OF PACIFICORP ADVICE NO. 11-011  
SCHEDULE 37 – AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES (10,000 KW OR LESS)**

Map of Oregon Service Territory

June 27, 2011

# O R E G O N



**EXHIBIT B**

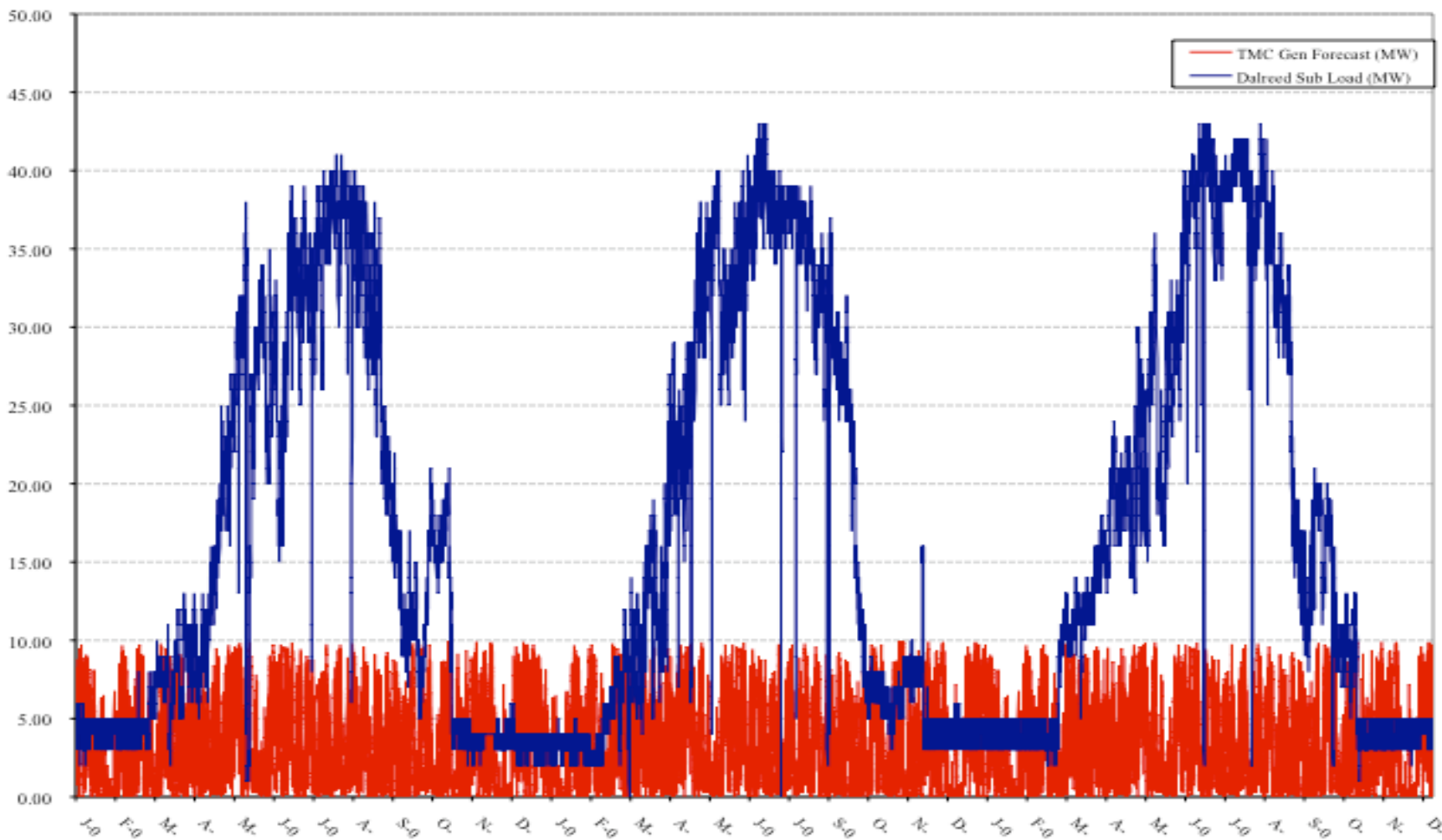
**to**

**AFFIDAVIT OF BRUCE GRISWOLD  
IN SUPPORT OF PACIFICORP ADVICE NO. 11-011  
SCHEDULE 37 – AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES (10,000 KW OR LESS)**

Hourly Load and Resource Data for the  
Dalreed Substation on July 2, 2009

June 27, 2011

Loads and Resources at Dalreed Substation (study using 2006-2008 Dalreed Load and predated Threemile Generation)



Time	TMC Gen Forecast (MW)	Gen Events per Year (hours)	Total Excess MWhs per Month	% of Hours per Year	% of MWhs Year
2006 Total	28,366.3	1,166.0	2,666.6	13.3%	9.4%
2007 Total	28,366.3	1,289.0	2,980.2	14.7%	10.5%
2008 Total	28,419.0	1,020.0	2,277.5	11.6%	8.0%

**EXHIBIT C**

to

**AFFIDAVIT OF BRUCE GRISWOLD  
IN SUPPORT OF PACIFICORP ADVICE NO. 11-011  
SCHEDULE 37 – AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES (10,000 KW OR LESS)**

Notice of Advice Filing 11-011  
Provided to Qualifying Facilities

June 27, 2011



June 27, 2011

**Attention: Potential Oregon Qualifying Facility (QF) Customers:**

Under the Public Utility Regulatory Policy Act of 1978 and Oregon law and regulations, you have the right to sell the output of your QF to PacifiCorp. PacifiCorp's Oregon Tariff Schedules 37 and 38 govern the pricing, terms and conditions of any such sale. PacifiCorp's published avoided cost rates in Oregon are subject to periodic change as provided in OAR 860-029-0080(3), (7), and (8).

On June 27, 2011, PacifiCorp filed Advice No. 11-011 with the Public Utility Commission of Oregon (Commission). In Advice No. 11-011 PacifiCorp filed revisions to Schedule 37 and revisions to associated standard contracts. These revisions explicitly require a QF seeking to sell net output to PacifiCorp under Schedule 37 to pay the cost of any additional transmission service needed to wheel a QF's generation out of a PacifiCorp load pocket when the QF's output will cause generation to exceed load in the load pocket. The modified Schedule 37 is necessary to ensure PacifiCorp is not required to pay more than avoided cost for net output from small QFs delivering to PacifiCorp load pockets. These revisions may affect the terms and conditions of contracts for certain QFs seeking to sell their output to PacifiCorp through Schedule 37.

PacifiCorp proposes that the revised Schedule 37 and the revisions to associated standard contracts become effective July 27, 2011. Schedules 37 and associated standard contracts, together with notice of any pending application by PacifiCorp for changes thereto, are posted at:

<http://www.pacificorp.com/es/cg/cqfp.html>

**BEFORE THE OREGON PUBLIC UTILITY COMMISSION**

**ADVICE NO. 11-011**

PACIFICORP, dba PACIFIC POWER

AFFIDAVIT OF DENNIS  
DESMARAIS IN SUPPORT OF  
ADVICE NO. 11-011

1 I, Dennis Desmarais, having been duly sworn to testify truthfully, say that:

2 1. I am an employee of PacifiCorp, dba Pacific Power. I am employed by  
3 PacifiCorp in the transmission department (PacifiCorp Transmission) as Director,  
4 Transmission Services.

5 2. I have a Bachelor of Science degree in Mechanical Engineering from the  
6 University of Washington and 30 years experience in the energy industry. For the last six  
7 years I have managed all requests for generator interconnection for both PacifiCorp dba  
8 Rocky Mountain Power and Pacific Power.

9 3. I am director of the department within PacifiCorp that administers  
10 generator interconnections, including interconnections with qualifying facilityies (QFs),  
11 for PacifiCorp Transmission’s system in Oregon. My department also administers  
12 requests by PacifiCorp’s merchant function (PacifiCorp Merchant) made pursuant to  
13 Part III of PacifiCorp’s Open Access Transmission Tariff (OATT) to have generation,  
14 including QFs from which PacifiCorp Merchant is purchasing output, designated as a  
15 *Network Resource*. This designation allows PacifiCorp Merchant to wheel the QF output  
16 to local load using Network Integration Transmission Service purchased from PacifiCorp  
17 Transmission.

18 4. When processing a request from PacifiCorp Merchant to designate a QF as  
19 a Network Resource, PacifiCorp Transmission considers whether the QF will deliver its

1 generation output into a PacifiCorp load pocket and whether the addition of the QF  
2 output will cause generation in the load pocket to exceed load in the load pocket at any  
3 time.

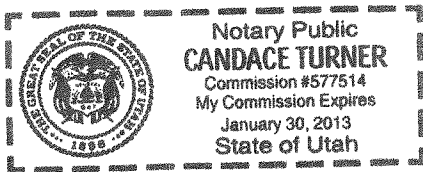
4 5. If the delivery of a QF's output to a load pocket will cause generation to  
5 exceed load in the load pocket at any time, the safety and reliability of the electric  
6 transmission and distribution system requires that the excess generation is either curtailed  
7 or wheeled via third-party transmission to a portion of PacifiCorp's system where  
8 adequate load exists to absorb the excess generation.

9 6. If PacifiCorp Transmission determines that the addition of the QF as a  
10 Network Resource could cause generation in a load pocket to exceed load in the load  
11 pocket and thereby require either curtailment of generation in the load pocket or the  
12 purchase of third-party transmission service to wheel excess generation out of the load  
13 pocket, PacifiCorp Transmission will so inform PacifiCorp Merchant as part of the letter  
14 designating the QF as a Network Resource. Such a letter will quantify the amount of  
15 third-party transmission needed to address the excess generation concern. An example of  
16 such a letter is attached hereto as Exhibit A.

17 7. The document attached as **Exhibit A** is a true copy of a letter from  
18 PacifiCorp Transmission to PacifiCorp Merchant dated June 10, 2011 approving Network  
19 Resource designation for a 10 MW QF proposing to deliver net output to a PacifiCorp  
20 load pocket located in Oregon. The identity of the QF has been redacted from the letter.  
21 The letter notes that historic minimum load in the load pocket area is 6.2 MW and  
22 concludes that because the capacity of the newly designated Network Resource "exceeds  
23 PacifiCorp's minimum area load, PacifiCorp Merchant will need to arrange for

1 transmission service with Bonneville Power Administration to accommodate the full 10  
2 MW [of new generation capacity provided by the newly designated QF].” This letter  
3 provides an example of the type of Network Resource designation letter issued by  
4 PacifiCorp Transmission that will be relied on by PacifiCorp in implementing the  
5 revisions to PacifiCorp’s Oregon Tariff Schedule 37 proposed in Advice No. 11-011.

DATED: June 23, 2011.



A handwritten signature in cursive script that reads "Dennis Desmarais".

Dennis Desmarais  
Director Transmission Services  
PacifiCorp

State of Utah                    )  
  ) ss.  
County of Salt Lake         )

I, Candace Turner notary public, do hereby certify that on this 23<sup>rd</sup> day of June, 2011, personally appeared before me Dennis Desmarais, who, being by me first duly sworn, declared that he made his mark on the foregoing instrument, and that the statements therein contained are true.

A handwritten signature in cursive script that reads "Candace Turner".

**EXHIBIT A**

**to**

**AFFIDAVIT OF DENNIS DESMARAIS  
IN SUPPORT OF PACIFICORP  
ADVICE NO. 11-011**

June 10, 2011 Letter from PacifiCorp Transmission to  
PacifiCorp Merchant Designating a Qualifying Facility  
as a Network Resource

June 27, 2011



P.O. Box 2757  
Portland, OR 97208-2757

June 10, 2011

Fred Keast  
Supervisor, M&T Contracts  
PacifiCorp Merchant Function (Merchant)  
825 N.E. Multnomah St., 600-LCT  
Portland, OR 97232

**Re: [REDACTED] Network Resource Approval for 10 kW (OASIS AREF [REDACTED])**

The above-referenced request for 10 MW of the [REDACTED] network resource beginning April 1, 2012 is hereby approved in accordance with section 30.2 of PacifiCorp's Tariff.

However, please be advised that the historic minimum load in the area of this request was 6.2 MW. Because this request exceeds PacifiCorp's minimum area load, PacifiCorp Merchant will need to arrange for transmission service with Bonneville Power Administration to accommodate the full 10 MW.

AREF [REDACTED] will remain in RECEIVED status until such time as the associated generation interconnection project is in service. If you have any questions regarding the above, please call me at (503) 813-5588.

Sincerely,

Nita O'Hara  
Account Manager, Transmission Services