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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 151

In the Matter of)	
)	ORDER
PACIFIC POWER & LIGHT (dba PacifiCorp))	
)	
Request to Approve Special Conditions to)	
Schedule 270 relating to New Wind,)	
Geothermal and Solar Power Rider)	
(Advice No. 03-005);)	

DISPOSITION: ADVICE NO. 03-005 ALLOWED; WAIVER GRANTED

On April 4, 2003, Pacific Power & Light Company (PacifiCorp) filed Advice No. 03-005 with the Public Utility Commission of Oregon pursuant to ORS 757.205, acknowledging a disagreement between PacifiCorp and Staff regarding whether the offering of green tags to large non-residential customers is a competitive service. Staff believes it is a competitive service, subject to the *Code of Conduct*. PacifiCorp believes that the service is not subject to the *Code of Conduct*. The special conditions proposed in PacifiCorp's filing allows PacifiCorp to continue offering green tags to large non-residential customers, while further discussions regarding the applicability of the *Code of Conduct* continue.

PacifiCorp amended its filing on May 20, 2003 to change the effective date of the filing from July 1, 2003 to July 2, 2003. On June 20, 2003, PacifiCorp amended its filing based on Staff's requests that the proposed tariff language be modified. On June 23, 2003, PacifiCorp requested that the Commission waive the requirements of OAR 860-038-0500 through 0640 (Code of Conduct Rules).

At its public meeting on July 1, 2003, the Commission adopted Staff's recommendation, attached as Appendix A and incorporated by reference.

ORDER

IT IS ORDERED that:

1. Pacific Power and Light Company's request for a waiver of OAR 860-038-0540 is granted.
2. Advice No. 03-005, as filed on April 4, 2003, and amended on May 20, 2003 and June 20, 2003, is effective July 2, 2003.

Made, entered and effective _____.

BY THE COMMISSION:

Becky Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

ITEM NO. CA2

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 1, 2003**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** July 2, 2003

DATE: June 23, 2003

TO: John Savage through Lee Sparling and Jack Breen III

FROM: Janet Fairchild

SUBJECT: PACIFIC POWER & LIGHT: (Advice No. 03-005) Adds special conditions to new wind, geothermal, and solar power rider.

STAFF RECOMMENDATION:

Staff recommends the Commission grant PacifiCorp's request for a waiver of OAR 860-038-0540 and approve Advice No. 03-005, as filed on April 4, 2003, and amended on May 20, 2003 and June 20, 2003, to become effective July 2, 2003.

DISCUSSION:

On April 4, 2003, PacifiCorp filed Advice No. 03-005 to become effective July 1, 2003. The filing was made in accordance with ORS 757.205, *Filing Rate Schedules with the Commission*. PacifiCorp's advice letter acknowledges a disagreement between the Company and staff regarding whether the offering of green tags to large non-residential customers is a competitive service. Staff believes that it is a competitive, subject to the *Code of Conduct*. The Company believes that the service is not subject to the *Code of Conduct*. The special conditions proposed in PacifiCorp's filing allows the company to continue offering green tags to large non-residential customers, while further discussions regarding the applicability of the *Code of Conduct* to continue.

PacifiCorp amended its filing on May 20, 2003 to change the effective date of the filing from July 1, 2003 to July 2, 2003. On June 20, 2003, PacifiCorp amended its filing based on staff's requests that the proposed tariff language be modified. On June 23, 2003, PacifiCorp requested that the Commission waive the requirements of OAR 860-038-0540 for the purposes of this tariff.¹

**APPENDIX A
PAGE 1 OF 4**

¹ OAR 860-038-0540 prohibits companies from allowing proprietary customer information to be given to employees of its competitive operations without the written consent of the customer.

Pursuant to ORS 757.646, the Commission has implemented OAR 860-038-0500 through 0640 (Code of Conduct Rules). Staff and PacifiCorp agree that: 1) green tags to large non-residential customers should be tariffed pursuant to ORS 757.205(1); 2) the revenues and costs associated with the offering should not be reflected in regulated operations; and 3) ratepayers should not subsidize the program.

Staff and PacifiCorp disagree on whether this statute and the associated rules apply to this offering. Staff believes that the offering constitutes a competitive offering, defined in OAR 860-038-0005(8) as “*any activity related to the provisioning of electricity service conducted by the electric company’s nonregulated operation or the electric company’s affiliate.*” PacifiCorp believes that the market in green tags is not the subject of the legislation and that, other than the prevention of cross-subsidization by charging costs to proper account codes, regulation is unnecessary.

Staff is supportive of PacifiCorp offering green tags to large commercial customers. The purchase of green tags under the proposed tariff is strictly optional and competitors are not precluded from marketing to large non-residential customers in PacifiCorp’s service territory. No harm will come to customers if the Commission approves PacifiCorp’s proposed tariff, provided it is subject to the following conditions. These conditions reflect a compromise that allows PacifiCorp to offer green tags to large non-residential customers without agreeing that the offering is subject to the *Code of Conduct*. They provide customers and competitors with essentially the same protections afforded by the *Code of Conduct* regulations. Therefore, based on these conditions, staff is willing to recommend approval of the proposed tariff.

Special Condition No. 4:

For accounting purposes the fully distributed costs associated with the program will be booked in accordance with normal FERC accounting procedures. For the purposes of earnings demonstrations (i.e., Results of Operations reports, general rate cases, etc) a normalizing adjustment will be made to remove the revenues, program costs and above market costs of the energy associated with the program from the revenue requirement calculation.

Special Condition No. 5:

The Company may use consumer proprietary information gathered for the provision of electricity service upon a Consumer’s written or verbal permission as long as it provides the same information under the same terms and conditions to alternative TRC providers upon the Consumer’s written or verbal request.

Special Condition No. 6:

The Company will communicate to Consumers that they are not required to buy TRCs from the Company in order to continue to receive the Company's safe and reliable Electricity Service.

Special Condition No. 7:

The Company will not use bill inserts to market TRCs to Consumers served under this tariff.

OAR 860-038-0500 explains that the Code of Conduct is meant to avoid market power abuses and cross-subsidization between regulated and unregulated activities. Staff believes that Special Condition Nos. 4 through 7 meet that goal.

OAR 860-038-0520 prohibits use of the electric company's corporate name, trademark, brand, or logo by nonregulated affiliates without an accompanying disclaimer. Since PacifiCorp is offering its Large Nonresidential TRC program through an internal unregulated department as opposed to a separate affiliate, this rule is not applicable. Staff does not believe use of PacifiCorp's name, trademark, brand or logo in offering this service will cause harm to either customers or competitors.

OAR 860-038-0540 prohibits the Company from providing a customer's proprietary information to employees of its competitive operations without the customer's written consent. PacifiCorp applied for a waiver of this rule on June 23, 2003. Staff agrees with PGE that Special Condition No. 5 provides adequate protection of customer information and ensures handling of customer information will not afford a competitive advantage over other TRC providers. Therefore, Staff supports PacifiCorp's request for a waiver of OAR 860-038-0540.

OAR 860-038-0560 requires electric companies to treat its competitors fairly in all respects and in a manner consistent with its treatment of its own competitive operations. Staff believes that Special Condition Nos. 5 through 7 afford reasonable assurance that this requirement will be met.

OAR 860-038-0580 was established to prevent cross subsidization between regulated and competitive operations. Staff believes that Special Condition No. 4 meets the same objective. It requires the costs and revenues associated with the program will be separated from regulated operations, providing a safeguard against cross subsidization.

OAR 860-038-0590 addresses transmission and distribution access. It is not applicable to the issues in this filing.

OAR 860-038-0600 prohibits joint marketing activities and referral arrangements between an electric company's regulated and competitive operations. Staff believes that Special Condition No. 7 affords reasonable assurance that this requirement will be met.

OAR 860-038-620 and 640 address the Commission's access to the electric company books and records, and requires certain compliance filings. PacifiCorp's obligation to comply with these requirements will not change as a result of this filing.

PROPOSED COMMISSION MOTION:

PacifiCorp's request for a waiver of OAR 860-038-0540 be granted and Advice No. 03-005, as filed on April 4, 2003, and amended on May 20 and June 20, 2003, be effective July 2, 2003.