

ORDER NO. 11 439

ENTERED NOV 09 2011

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 235

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Investigation Into Avoided Cost Purchases
from Qualifying Facilities - Schedule 37

ORDER

DISPOSITION: RECOMMENDATION ADOPTED

On June 27, 2011, PacifiCorp, dba Pacific Power (Pacific Power) filed Advice No. 10-011 with the Public Utility Commission of Oregon (Commission), and requested a revision to Schedule 37. Comments were considered at subsequent public meetings, especially concerning the Butter Creek Projects. A description of the procedural history is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

At its public meeting on November 1, 2011, the Commission adopted Staff's recommendation with one modification. The Butter Creek Projects must have signed Schedule 37 Power Purchase Agreements on or before November 18, 2011.

ORDER

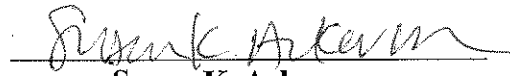
IT IS ORDERED that:

1. The Schedule 37 contracts for the Butter Creek Projects will not be subject to change to reflect the outcome of the investigation in this docket, if those contracts are signed on or before November 18, 2011, and substantially conform to the term sheet provided on October 27, 2011.
2. Any contracts requested and executed after August 18, 2011, will be subject to the outcome of the investigation in this docket.
3. Review of the prudence of the settlement agreement and the resulting Schedule 37 power purchase agreements is reserved for a future rate-making proceeding.

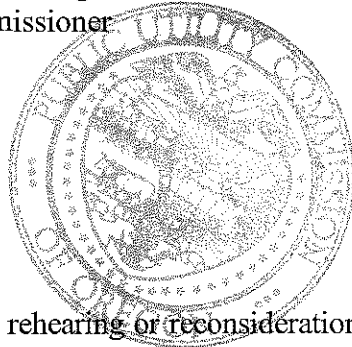
Made, entered, and effective NOV 09 2011.



John Savage
Commissioner



Susan K. Ackerman
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ITEM NO. 1A

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 1, 2011**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: October 31, 2011

TO: Public Utility Commission

FROM: Maury Galbraith *MGF*

THROUGH: Lee Sparling *ls*

SUBJECT: PACIFIC POWER: (Docket No. UE 235/Advice No. 11-011) Application of the outcome of the investigation into the appropriate Schedule 37 avoided cost rates for Qualifying Facilities located in an isolated load pocket to power purchase agreements requested before August 18, 2011 and executed during the investigation.

STAFF RECOMMENDATION:

Staff recommends that the Commission find the settlement agreement between PacifiCorp and the owners and developers of the Butter Creek Projects to be reasonable for the limited purpose of concluding that the outcome of Docket UE 235 should not be applied to these QF projects, which allows the projects to proceed with regulatory certainty on this issue. Staff recommends that the Commission reserve the review of the prudence of the settlement agreement and the Schedule 37 PPAs for a future rate-making proceeding. Any contracts requested and executed after August 18, 2011, should be subject to the outcome of the investigation in UE 235.

DISCUSSION:

On June 27, 2011, PacifiCorp filed Advice No. 11-011 and requested a revision to Schedule 37, "Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less" to address situations where additional third party transmission is required to move some portion of a Qualifying Facility's (QF) output to the company's load. PacifiCorp indicated that additional third party transmission may be needed when a QF locates in an isolated segment of its system. These "load pocket" situations can result when local generation exceeds local load and third party transmission is needed to deliver the full output of the QF to load elsewhere in PacifiCorp's system.

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According to PacifiCorp, these situations create a regulatory conflict. The Public Utility Regulatory Policies Act of 1978 (PURPA) protects the utility and its customers by limiting the rate paid for QF output to no more than the utility's full avoided cost. In this case, the rates published in PacifiCorp's Schedule 37 reflect the company's full avoided cost of alternative supply. PacifiCorp argues that requiring it to pay for third party transmission in QF load pocket situations would result in the company paying more than full avoided cost for the QF output, which would violate the PURPA cost cap.

On July 26, 2011, at its regularly-scheduled Public Meeting, the Commission considered PacifiCorp's proposal to remedy the QF load pocket problem.¹ The Commission decided that the filing should be investigated, but indicated it needed more information on the available options for the application of the results of the investigation to power purchase agreements (PPAs) that are requested or executed during the investigation. A primary concern was that developers of the Butter Creek Projects² had invested significant time and money in their projects and that any uncertainty regarding how the results of the investigation would be applied to the projects could jeopardize the scheduled completion of the projects and the ability to access federal tax credits. The Commission directed Staff to prepare a report, in consultation with the Department of Justice (DOJ), on the available options.

On August 3, 2011, Staff presented its report on the available procedural options.³ After considering the options, the Commission asked PacifiCorp and the developers of the Butter Creek Projects to explore a mutually agreeable solution that would allow these projects to be developed without significant delay.

On August 18, 2011, PacifiCorp and the developers of the Butter Creek Projects reported on the status of their negotiations.⁴ The parties indicated that they had made progress, but asked for more time to negotiate a mutually agreeable solution. The Commission granted the request and deferred its decision regarding whether to apply

¹ The Staff Report and the audio recording of the Commission deliberations are available on the Commission's website. See Regular Agenda Item #1 at:
<http://www.puc.state.or.us/PUC/meetings/pmemos/2011/072611/agenda.shtml>

² The four Butter Creek Projects are: Lower Ridge Windfarm, High Plateau Windfarm, Mule Hollow Windfarm, and Pine City Windfarm.

³ The Staff Report and the audio recording of the Commission deliberations are available on the Commission website at:
http://www.puc.state.or.us/PUC/meetings/pmemos/2011/2011_history.shtml

⁴ The audio recording of the Commission deliberations are available on the Commission's website at:
http://www.puc.state.or.us/PUC/meetings/pmemos/2011/2011_history.shtml

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the outcome of the investigation to any PPA requested before August 18, 2011, and executed during the investigation.⁵

On October 4, 2011, PacifiCorp and the developers of the Butter Creek Projects updated the Commission on the status of their negotiations.⁶ The parties indicated that they had reached an agreement in principle, but asked for more time to complete the formal settlement agreement.

Finally, on October 27, 2011, PacifiCorp sent Staff an e-mail indicating that the parties were close to finalizing a settlement agreement between the parties. The e-mail included a term-sheet that described the terms and conditions of the settlement. The settlement includes: an agreement regarding the interconnection for each of the four Butter Creek Projects, an agreement regarding the standard Schedule 37 PPAs for each of the four projects, and an agreement regarding the allocation of operation and maintenance costs of shared facilities and the appointment of a shared facilities manager to manage the interconnection facilities.

Staff has reviewed the terms and conditions of the settlement. It is clear that each party made concessions in order to reach a mutually agreeable compromise. For example, the owners and developers of the Butter Creek Projects have agreed to pay the actual cost to construct a three-breaker ring bus at the Cold Springs substation, with a fixed monetary credit from PacifiCorp. PacifiCorp has agreed to allow the owners of the Butter Creek Projects to substitute alternative forms of security from time-to-time, and to provide "step-in rights" as security under certain conditions. With respect to the load-pocket problem, the parties agreed to a specific formula for sharing either the cost of third-party point-to-point transmission or the cost of curtailment of the output of the Butter Creek Projects.

PacifiCorp does not admit any wrongdoing or violation of Commission order or filed tariff. The owners and developers of the Butter Creek Projects agree to release PacifiCorp from any claims related to their request for interconnection agreements or PPAs and agree not to oppose Advice No. 11-011 or intervene or comment in Docket UE 235.

⁵ The Commission also suspended Advice No. 11-011 for a six-month investigation and decided that the outcome of the investigation would apply to any PPA first requested on or after August 18, 2011. See Commission Order 11-341 at: <http://apps.puc.state.or.us/orders/2011ords/11-341.pdf>

⁶ The audio recording of the Commission deliberations are available on the Commission's website. See Regular Agenda Item #2 at: <http://www.puc.state.or.us/PUC/meetings/pmemos/2011/100411/agenda.shtml>

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PacifiCorp and the owners and developers of the Butter Creek Projects request the Commission issue a ruling indicating that the settlement terms and conditions are just and reasonable. Staff recommends that the Commission find the settlement terms and conditions to be reasonable for the limited purpose of resolving the issue of the application of the outcome of the investigation in Docket UE 235 to Schedule 37 power purchase agreements with the Butter Creek Projects. A primary concern was that developers of the Butter Creek Projects had invested significant time and money in their projects and that the uncertainty regarding the application of the investigation could jeopardize the scheduled completion of the projects. For these reasons, and because the Butter Creek Projects have now reached general agreement with PacifiCorp on the terms of PPAs, Staff recommends that the Projects not be subject to any modification of Schedule 37 resulting from the UE 235 investigation.

This finding should not be construed as pre-approval or acknowledgment of the settlement agreement between PacifiCorp and the Butter Creek Project developers or the resulting Schedule 37 PPAs for rate-making purposes. Staff recommends that the Commission reserve the review of the prudence of the settlement agreement and the Schedule 37 PPAs for a future rate-making proceeding.

PacifiCorp has stated that only two other potential QFs had requested PPAs prior to August 18, 2011. For the Three Mile Canyon Wind I Project the load pocket dispute is set to be resolved by the Commission in a formal complaint proceeding.⁷ According to PacifiCorp, the other potential QF, the Three Mile Canyon Biomass Project, has indicated a willingness to pay the third party transmission costs needed to deliver the project output to PacifiCorp load. No other potential QFs are as far along in the project development and Schedule 37 contracting process, so Staff recommends that any other project executing a Schedule 37 contract before the Commission issues its decision in UE 235 should be subject to the outcome of the investigation.

⁷ See Docket UM 1456 at: <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16906>

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PROPOSED COMMISSION MOTION:

The Schedule 37 contracts for the Butter Creek Projects not be subject to change to reflect the outcome of the investigation in Docket UE 235, if those contracts are signed on or before November 15, 2011, and substantially conform to the term sheet provided on October 27, 2011. Any contracts requested and executed after August 18, 2011, will be subject to the results of the investigation. Review of the prudence of the settlement agreement and the resulting Schedule 37 PPAs is reserved for a future rate-making proceeding.

Pacific Power Advice 11-011 Settlement 10-28-2011