

US MAGNESIUM LLC

238 North 2200 West - Salt Lake City, UT 84116-2921
801/532-2043 - 800/262-9624 - FACSIMILE 801/534-1407

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Utah Public Service Commission
Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84114-6751

RE: Docket No. 02-035-T11; Schedule 38, Qualifying Facilities
Comments Of US Magnesium concerning proposed tariff 44.

Extensive discussions have taken place in recent months concerning barriers to the development of power resources from non-utility sources of generation. Among the most significant barriers identified is the lack of a clear process for Qualifying Facilities ("QF") that are greater than 1 MW or an independent power project ("IPP") to both understand the rate a facility would receive and the steps to obtain a contract. The proposed Tariff 44 language is a response from PacifiCorp to this barrier, but it is wholly inadequate.

In order for QF facilities to evaluate the potential for investing in resource development, there must be clear economic signals presented as to the value of power that a facility could provide to the utility. Also, there must be a process that will not require extraordinary efforts, such as litigation or arbitration before this Commission, by developers each time a new facility is proposed. The process should not require regulatory staff to be burdened with determining a specific value for each proposed development, but should be based on a predetermined set of criteria that are agreed upon or otherwise approved by the Commission.

PacifiCorp's proposed tariff 44 language does not explain how the avoided cost rate that a QF will be paid will be determined. By not providing a methodology that has been accepted by all parties or determined by the Commission, the process will inevitably lead to conflict and sub-optimal resource development. If the methodology is left as a "black box" in the hands of the utility, resources will not be developed unless and until the utility wants them to be developed. This type of approach is inefficient and unfair, and also inconsistent with the intent of the Federal Energy Regulatory Commission under 18 CFR Section 292.302. A utility should be required to make data available "from which avoided costs may be calculated". It is critical that such data be made readily available in order to encourage efficient cogeneration and small power production projects.

The proposed tariff language should also not include vague language to the effect that a developer, in order to receive "indicative pricing," must provide "any other information requested by the Company". This, again, leaves it to the discretion of the utility whether to provide requested pricing information, or simply keep asking for additional information. Moreover, such vague language is contrary to the intent of 18 CFR Section 292.302.

The draft tariff language also requires that, if a developer wishes to receive a draft purchase agreement, it must show evidence as to all aspects of project development, including

project financing. There is no tariff language to guide the subjective determination that PacifiCorp will apply to determine whether the “evidence” is good enough to allow the process to go to the next step - “subsequent negotiation”.

By requiring a developer to establish a specific set of information as to the nature of the operation, a QF developer cannot optimize the generation system to match the greatest needs of the utility. The QF developer is left to guess at the highest value utility need and provide operating profiles to which PacifiCorp may respond in determining value. Then, with only an “indicative” price in hand, the QF developer must somehow provide evidence of its ability to obtain financing for the project. In the real world, assurance of funding will be obtained only if and when there is certainty of the power purchase price. The language proposed by PacifiCorp can be used to stop any development that it wishes to stop, simply by stating that it will not provide a “draft power purchase agreement” until it receives evidence that, in its sole discretion, meets its criteria.

PacifiCorp’s language, as proposed, fails to clarify any aspect of the process for obtaining QF pricing information as to avoided cost. Also, it clearly does not help define or streamline the negotiation process for obtaining a power purchase agreement. Our concerns might not be so great if PacifiCorp had a good record of supporting QF or IPP projects and providing information needed in the planning and financing stages for such projects. To the contrary, our experience has been that PacifiCorp refuses to provide meaningful input to the process unless forced to do so in litigation. As an illustration of our recent frustration with PacifiCorp’s failure to provide meaningful input, attached are copies of a recent correspondence directly regarding our request for QF indicative pricing information.

One potential tool for making meaningful avoided cost information available might be through the IRP currently being developed. If the final IRP model is made available to parties, as it should be in any event in conformity with 18 CFR 292.302 as data from which avoided costs may be derived, a developer would have access to useful information. If such data is not made available, PacifiCorp will be able to continue discouraging and frustrating cogeneration and small power development in Utah.

The draft IRP shows that there is a significant need for additional resource development within the PacifiCorp system. If the draft tariff 44 language is not changed to remove subjective or “black box” determinants of value, there will continue to be minimal development of QF and IPP resources within Utah. PacifiCorp attempts to create a self-fulfilling prophecy by stating in its draft IRP that cogeneration development is considered a low probability in Utah. This will continue to be true without clear and transparent pricing methodologies and contracting procedures. On the other hand, if clear and objective procedures are developed, US Magnesium believes that a significant potential exists for QF and IPP development within the State.

US Magnesium appreciates the opportunity to provide its initial comments on the proposed tariff language. US Magnesium suggests that the Commission establish a technical conference in the near future to receive useful input on meaningful language for Tariff 44. To the extent appropriate, a hearing should also be scheduled for the purpose of receiving evidence in support of appropriate tariff language.

Sincerely,

Roger Swenson
Energy Manager
US MAGNESIUM LLC

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