State of Utah

DEPARTMENT OF COMMERCE
Office of Consumer Services

To: The Public Service Commission of Utah

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Date: April 26, 2010

Subject: PacifiCorp - Cottonwood Hydro, LLC Schedule 37 PPA; Docket No. 10-035-15

<u>Background</u>

In December 2009, Cottonwood Hydro, LLC (Cottonwood Hydro) and PacifiCorp executed a Power Purchase Agreement (PPA), in accordance with Schedule 37 - Avoided Cost Purchases From Qualifying Facilities (QFs), that relates to the sale of 850 KWs of power from Cottonwood Hydro to PacifiCorp. The contract term runs through December 31, 2011 (two years). The avoided cost energy and capacity prices to be paid to Cottonwood Hydro are set forth in Appendix C to the PPA. However, the issue of who should own the Renewable Energy Credits (RECs) associated with Cottonwood Hydro's output was left unresolved.

On March 10, 2010, Cottonwood Hydro filed a Request for Agency Action wherein it states that all RECs associated with the output of the QF should remain with the QF. Cottonwood Hydro further asserts that Net Metering Schedule 135, Provision #7, creates a legal entitlement for Cottonwood Hydro to retain ownership of RECs and recommends that Schedule 37 be amended to include this provision. Provision #7 of Net Metering Schedule 135 confers the non-energy attributes of output to the owner of a renewable energy facility.

<u>Issues</u>

The matter before the Commission involves two related issues. First, there is the issue of whether a small power producer selling QF output to PacifiCorp under Schedule 37 should retain ownership of RECs under a PURPA avoided cost contract. Cottonwood Hydro asserts the RECs should stay with the seller; PacifiCorp asserts the RECs should be transferred to the utility and its customers. Second, there is the issue of whether Avoided

Cost Schedule 37 should be modified to include Provision 7 of Net Metering Schedule 135.

Discussion

Schedule No. 37 – Avoided Cost Purchases from PURPA Qualifying Facilities

In compliance with PURPA requirements, Schedule No. 37 was developed to provide standard avoided cost energy and capacity rates for purchases from QFs based on the Company's avoided cost of generating or acquiring power.[1] Under PURPA, PacifiCorp is obligated to purchase all output generated by a QF at published Schedule 37 avoided cost rates. While PacifiCorp is required under PURPA to buy all power "put" to the utility by a QF, a QF has the option of selling output to other potential buyers. In short, the legal obligation between the two parties is not reciprocal. PacifiCorp has a legal obligation to buy QF power as mandated by PURPA; Cottonwood Hydro does not have a reciprocal legal obligation to sell power to the utility.

If a QF elects to sell power to PacifiCorp under Schedule 37 avoided cost rates, the Office believes all RECs should be transferred to PacifiCorp and its customers for the duration of the PPA. The renewable aspect of the project qualifies the producer as a PURPA QF. Thus, the RECs are inseparably tied to the output that a PURPA QF voluntarily agrees to generate and sell to the utility. No other buyer(s) should be able to claim an additional renewable benefit through a separate purchase of RECs from Cottonwood Hydro. The renewable benefit is bundled with the output purchased and paid for by the utility and should correspondingly flow to the utility and its retail customers.

If Cottonwood Hydro's assessment is that the avoided cost rate does not fully compensate it for the value of the output delivered to the utility, it has other options. First, it could seek to negotiate a bilateral contract with PacifiCorp that isn't based on published Schedule 37 rates. Second, it could shop its renewable output on the market and seek out prospective buyers.

Schedule No. 135 – Net Metering Service

Schedule 135 is available to net metering customers that own or lease a customer-operated renewable generating facility, subject to capacity restrictions and is intended to primarily offset part or all of a customer's own electrical requirements. Provision 7 of Schedule 135 confers non-energy attributes of output to the owner of a facility.
Cottonwood Hydro recommends amending Schedule 37 to include the same or similar language found in Provision 7 of Schedule 135. This would establish a legal entitlement for QF owners to retain RECs associated with QF output.

The Office believes there is an important and necessary distinction to be made between a PURPA QF whose primary business is to supply power to a utility at avoided cost rates and a net metering customer that is simply offsetting part or all his or her demand with output

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1 Per Schedule 37, Applicability is defined as follows: "For power purchased from Qualifying Facilities located in the State of Utah with a design capacity of 1,000 kW for a Cogeneration Facility or 3,000 kW for a Small Power Production Facility. Owners of these Qualifying Facilities will be required to enter into a written contract with the Company. A cumulative cap of 25,000 kW shall apply to new resources contracted under this schedule."

from a renewable facility. A QF producer's motive is to earn a profit as a seller of energy and capacity to a utility; a net metering customer's motive is to self-supply at least a portion of his or her energy requirements and reduce monthly bills as a buyer from the utility. The Office urges the Commission to recognize this important distinction and not adopt Cottonwood Hydro's proposal to modify Schedule 37.

<u>Recommendations</u>
The Office recommends the Commission:

(1) Assign all RECs associated with Cottonwood Hydro's output purchased by PacifiCorp under Schedule 37 to the utility and its retail customers.
(2) Reject Cottonwood Hydro's proposal to amend Schedule 37 by including Provision 7 of Schedule 135.