



1 **2. Discussion**

2 In Order 05-899, the Commission expressly stated that “the question as to whether these  
3 filings are subject to refund would be separately addressed at the outset of the investigation.”  
4 Order 05-899 at 2. PGE and Idaho Power took up the Commission’s invitation and present  
5 several arguments in support of their claim that ORS 757.215(4), the statute the Commission  
6 relied upon for its refund language, is not applicable to the compliance tariffs at issue.

7 ORS 757.215(4) provides as follows:

8 If the commission is required to or determines to conduct a hearing on a rate or  
9 schedule of rates filed pursuant to ORS 757.210, but does not order a suspension  
10 thereof, any increased revenue collected by the utility as a result of such rate or rate  
11 schedule becoming effective shall be received subject to being refunded. If the rate  
12 or rate schedule thereafter approved by the commission is for a lesser increase or  
for no increase, the utility shall refund the amount of revenues received that  
exceeds the amount approved as nearly as possible to the customers from whom  
such excess revenues were collected, by a credit against future bills or otherwise, in  
such manner as the commission orders.

13 In relevant part, PGE argues that ORS 757.215(4) is unambiguous and does not apply by  
14 its “plain language.” PGE first asserts that the compliance filings are not tariffs filed pursuant to  
15 ORS 757.210. PGE Opening Brief at 3. PGE next turns to various words and phrases used in  
16 ORS 757.215(4) and notes that a “qualifying facility” (QF) selling power to a utility is not a  
17 “customer” as that term is used in ORS 757.215(4). *Id.* at 4. PGE further points out the word  
18 “refund” does not include the concept of a buyer having to make additional payments to a seller.  
19 *Id.* at 4-5. PGE further notes that 757.215(4) concerns revenue or money obtained by the utility,  
20 not money paid by the utility to third-party power producers. *Id.* at 6.

21 Idaho Power argues that PURPA and FERC regulations preclude the Commission’s  
22 authority to order refunds under ORS 757.215(4). Idaho Power Opening Brief at 4-7. In  
23 relevant part, Idaho Power asserts the federal rules prevent the Commission from “retroactively”  
24 changing a QF rate once it is adopted.

25 Staff agrees that ORS 757.215(4) very likely does not apply to the compliance filings  
26 made in UM 1129. While staff disagrees with PGE that the compliance tariffs are not “tariffs

1 filed under ORS 757.210,” staff concurs that the plain language of ORS 757.215(4) does not  
2 seem to readily apply to a utility making third-party purchases from a QF power producer. In  
3 particular, the statute cites “any increased revenue collected by the utility” is received subject to  
4 refund. Staff concurs with PGE that this language does not seem to include payments made to a  
5 QF by a utility.

6 For the record, staff disagrees with the argument presented by Idaho Power. Idaho Power  
7 fails to appreciate that the Commission only *conditionally* approved the rates here, subject to  
8 further investigation. There is no issue of retroactively changing *final* rates as Idaho Power  
9 argues.

10 **3. Conclusion**

11 For the reasons stated, the Commission should amend its Order 05-899 in the manner  
12 discussed in the in the Introduction section of this response brief.

13 DATED this 21<sup>st</sup> day of September 2005.

14 Respectfully submitted,

15 HARDY MYERS  
16 Attorney General

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18 /s/Michael T. Weirich  
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21 Of Attorneys for the Public Utility Commission  
22 Staff  
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**CERTIFICATE OF SERVICE**

I certify that on September 21, 2005, I served the foregoing upon the parties hereto by sending a true, exact and full copy by postage prepaid, regular mail, or shuttle mail, and by electronic mail:

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