BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1129

In the matter of: **Investigation Related to Electric Utility Purchases from Qualifying Facilities**	**FAIR RATE COALITION RESPONSE TO OCTOBER 21, 2005 COMMENTS OF IDAHO POWER AND PACIFICORP RE: ISSUE LIST**

MOTION.

Fair Rate Coalition respectfully moves for the opportunity to file the following responses to specific comments by Idaho Power and Pacificorp to issues proposed by FRC and included in the Staff's Consolidated Issues list.

DISCUSSION.

I. INTRODUCTION.

FRC is a coalition of small hydro producers who have had contracts with either Pacific Power or Portland General Electric for a number of years. From past experience, course of dealing with the purchasing utility, and familiarity with the circumstances applicable to the business of small power production, they proposed that there be a simplified form of standard contract for small producers (200 kW or less output).

In the first exchange of issues FRC identified its issue as the "extent it can obtain relief from, or modify the standard terms, so as to have a standard contract applicable to small producers, such as the members FRC." Upon request for amplification, it offered more detail and the issues were expressed by Staff in the consolidated issue list of October 11, 2005:

10a. Should the small QFs be exempt from certain warranties and proposed contract terms depending upon such warranties which relate to output capacity, net output and maximum net output? Examples: PGE §§ 3.1.8 - 3.1.10, 4.2, 4.3; Pacific §§ 1.18, 4.1-4.2?

10.b. Should small QFs be offered a simplified contract price term more consistent with historical practices and the policy of encouraging diverse small resources and recognizing that the owners of smallest QFs lack resources to use sophisticated predictive measures? Examples include:

floating price which equals the highest price among the options (deadband Index Gas Price, Index Gas price, Mid-C Index Rate Price);

selection of option by QF at shorter intervals than life of agreement (quarterly, yearly);

other.

10.c. What protections from QF bankruptcy, default, impairment of credit are necessary to balance and protect the interests of the QF and the purchasing utility's ratepayers?

10.d. What adjustments are necessary or fair regarding metering, metering equipment, and faulty metering resulting in billing errors?

10.e Regarding default,

what constitutes default by either party;

what dispute resolution methods are reasonable;

what self-help and/or cure is available; and,

what should be the conduct after termination?

10.f Should the effective date of the new price term be made retroactive to the date of the expiration of the last agreement between the parties or some other date?

10.g Should there be a standard contract for new small QFs which differs in any way from standard contract for existing small QFs?

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II. RESPONSE TO OBJECTIONS.

A. DISPARITY OF BARGAINING POSITIONS.

Idaho Power has over 1750 employees, although it has a relatively small Oregon territory in 3 eastern counties. It has earnings of about $80 million a year, and its Oregon gross revenues alone are in excess of $25 million per annum. Pacificorp has more than 6650 employees and earnings in excess of a quarter of a billion dollars. Its gross Oregon revenues are about $50 million. Minikahda Hydro, Canyon Creek Hydro, Roush Hydro and Fery Hydro are run by single owner-operators[1]. None makes a living wage from the hydro project. Small, dispersed generators have no bargaining power. Given this lack of bargaining power, it is particularly important for government to insure equitable conditions of power sales. Unlike large corporate owners, these individuals are unable to spread expenses across a number of installations. These individual owners face a particular management burden because they are not primarily engaged in either the hydroelectric or generating business, both of which are complicated regulatory and marketing environments. They are now facing an uncertain future in the deregulated marketplace. Small plants have no economies of scale per unit of output, and comparatively major operating expenses to the individual owner such as labor, parts, insurance, regulatory compliance/licensing and contract administration.

B. COMMENTS BY IDAHO POWER.

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1. Since the death of her husband, Toni Roush has had one employee.

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It is not "unfair" for FRC to question whether the standard agreements implement Order 05-584 and PURPA as to them. The issue list was based upon the rationale of Order No. 69, Small Power Production and Cogeneration Facilities, FERC Reg Preambles 1977-1981 ¶ 30,128, 45 FedReg 24, 126 (April 9, 1980), restated in 18 CFR 292.304(c)(1), and which mandates a standard contract for facilities of 100 Kw or less. This requirement is based upon a recognition that this size threshold is a "tipping point" at which transaction costs become uneconomic and make participation impractical. While the regulator may require standard contracts for larger producers, PURPA singles out the most economically vulnerable QFs for particular protection and attention by standard contacts. PURPA hardly requires that the smallest producers be bound by the same contracts as producers which are orders of magnitude greater than they are.

The needs of the smallest producers are distinct from those of larger producers. FRC identified ways in which the standard terms ignore the small profit margins and limited resources of small producers. To the extent that some topics, such as default an dispute resolution, are being dealt with by the entire group of participants, it is hardly unfair to complain that FRC wishes to bring a particular perspective to how any negotiated term which might be economically reasonable for a larger producer may be inapplicable or administratively burdensome and inconsistent with 18 CFR § 292.304(c) as to the small producers.

While Idaho Power notes it has dozens of contracts in Idaho with small producers, small power production in Oregon has been stalled. The fact that there

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is a more robust environment in Idaho is circumstantial evidence that the Oregon regulatory environment should and can be more hospitable to small producers.

C. RESPONSE TO PACIFICORP.

Pacificorp objects to the inclusion of:

> 10.b Should small QFs be offered a simplified contract price term more consistent with historical practices and the policy of encouraging diverse small resources and recognizing that the owners of smallest QFs lack resources to use sophisticated predictive measures?

Small QFs simply do not have staff or the resources to do sophisticated studies of the avoided cost options. FRC proposed exploring several ways in which the burdens and risks can be ameliorated for small producers. Since both the examples rely upon the avoided costs in Order 05-084, it is difficult to understand Pacificorp's objection to considering such modifications.

Given the extraordinary inequality of bargaining position between Pacificorp and a QF which is a one-person operation, how difficult or disruptive could it be to allow the QF more frequent opportunities to choose an avoided cost option, or to simply assign the most advantageous option to the QF? Surely the utility has a large and capable staff and is monitoring the various avoided cost options regularly.

Pacificorp also objects to:

> 10.f Should the effective date of the new price term be made retroactive to the date of the expiration of the last agreement between the parties or some other date?

Several FRC members have been operating without any contract since late 2003, after which the utility unilaterally continued the arrangement without contract and paid the then-avoided cost to the QF. In short, some QFs do not have any

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contract, have not had a contract for two years, were paid a rate inconsistent with the avoided costs of Order 05-084, and have not signed the standard agreement becuase of lack of funds to retain consultants to advise them. Thus the issue of retroactively changing the term of a *contract* does not arise as to the FRC members in this position.[2]

Dated: October 31, 2005 Respectfully submitted,
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2. The facts concerning several other FRC members are specific to their situation.

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing MOTION FOR LEAVE TO FILE COMMETNS this copy this date to the Oregon Public Utility Commission, followed by mailing the original and 5 copies by placing same into the U.S. Mail, first class postage prepaid, addressed to the Administrative Hearings Section of the Commission and I further certify that I hand delivered and/or served a true and correct copy thereof by e-mail as such addresses appear on the service list, and further, placed in a sealed envelope and deposited in the U.S. Postal Service at Portland, Oregon, with first class postage prepaid, to the parties in UM 1129, by mailing same first class postage paid to the service list as it appears on the service list as appended hereto.

November 4, 2005

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