

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1129**

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Staff's Investigation Relating to Electric
Utility Purchases From Qualifying Facilities.

STAFF'S COMMENTS ON THE
ISSUES LISTS FOR PHASE I
COMPLIANCE AND PHASE II

Following are staff's comments on the issues lists proposed by parties in the investigation into utility filings made in compliance with Commission Order No. 05-584, as well as the Phase II investigation directed by the Commission.

Pursuant to Judge Kirkpatrick's memorandum of August 23, 2005, parties distributed their draft issues lists on September 12, 2005. To expedite development of the final lists, staff distributed its proposed consolidated issues lists to parties by e-mail and at the settlement workshop on October 3, 2005. As agreed at that workshop, on October 7, 2005, parties e-mailed the service list their proposed changes to staff's consolidated lists. Two parties included additional, or more specific, issues.

To avoid the need for reply comments on the issues lists, staff specifically asked parties to notify the service list if they planned to pursue in this case any issue they proposed but that was not included in staff's lists. Similarly, we asked parties to advise the service list if they planned to oppose any issue staff included. To the extent that parties did not make known their opposition to including an issue or not including an issue, staff reserves the right to request an opportunity to reply.

Attached are the consolidated issues lists we provided to parties on October 11, 2005, accounting for the changes and clarifications received from parties. The lists are separated into Phase I Compliance and Phase II issues. The Phase I list is further divided into issues that apply to filings by all three electric companies and those that apply only to specific filings.

Staff's comments below refer to issues, by number, as they appear in these lists. For ease of the Commission, parties agreed at the settlement workshop to refer to these lists in their comments.

Staff asked parties to notify the service list as soon as possible before October 21, 2005, if they decide not to pursue in this docket an issue they previously raised. Portland General Electric's (PGE) compliance filing for Order No. 05-1061 made October 12, 2005 (Advice No. 05-16), removing the subject to refund clause from the standard contract, included a correction and clarification to address items 28 and 29 in the attached Phase I list. Sherman County/Simplot notified parties on October 13, 2005, that these issues may be removed from the issues list because they are no longer outstanding issues.

This document is divided into two sections. In the first section, staff explains its basis for including issues in the proposed consolidated lists. In the second section, we explain why we did not include certain issues proposed by parties.

Issues Staff Included in the Consolidated Lists

Phase I Issues. The Commission approved the utility filings made pursuant to Order No. 05-584 subject to investigation. *See* Order No. 05-932. Through the compliance filings, the Commission is approving standard contracts for Qualifying Facilities (QFs) for the first time. The Commission and parties first saw these contracts at the time the compliance filings were made. The Commission is now investigating whether the provisions in the standard contracts, and the standard avoided cost rates, terms and conditions in the filed rate schedules, comply with the order and are reasonable.

It is staff's understanding that the only issue that parties disagree should be taken up in Phase I is item 25, Issues related to the application of the Revised Protocol. The Industrial Customers of Northwest Utilities (ICNU) raised this issue.

The Revised Protocol states that "Costs associated with any New QF Contract, which exceed the costs PacifiCorp would have otherwise incurred acquiring Comparable Resources, will be assigned on a situs basis to the State approving such contract."

PacifiCorp opposes the issue being included in this case. The company does not believe the issue is relevant to the determination of avoided costs under the methodology approved by the Commission.

ICNU states that this issue will seek to confirm that the avoided costs established through the Commission's approved methodology is consistent with the costs PacifiCorp would otherwise incur to acquire Comparable Resources. Staff agrees that this issue would clarify that the Commission's methodology for calculating avoided costs produces results consistent with the costs PacifiCorp would incur for resources it would acquire but for purchases from QFs.

Phase II Issues. Staff views Phase II as addressing only those issues that Order No. 05-584 directs be considered, with two exceptions. Therefore, staff's list begins by simply repeating the Commission's issues list from pages 3-4 of the order. We then add under each issue any detailed issues for Phase II the Commission raised elsewhere in the order, as well as related issues subsequently raised by parties. The two exceptions are as follows:

PacifiCorp first raised item 11, related to avoided costs for very large projects, in the Commission's investigation into competitive bidding (UM 1182). UM 1182 parties agreed to move the issue to UM 1129 after Order No. 05-584 established a second phase.

Staff included item 12 at PGE's request, in response to the Energy Policy Act (EPACT) of 2005. Section 1253 of that law made changes to the Public Utility Regulatory Policies Act (PURPA) that affect future QF contracts related to the obligation to purchase, project ownership and efficiency standards. The Commission's decision on termination of contracts upon repeal of PURPA is not superseded by the provisions in EPACT that allow a utility to apply to the Federal Energy Regulatory Commission (FERC) for relief from a mandatory purchase obligation. *See* Order No. 05-584 at 57. However, staff agrees with PGE that the Commission should explore issues related to new contracts with QFs wheeling power from the service area of another utility, where that utility has been relieved by FERC of a mandatory purchase obligation under PURPA pursuant to the new law.

Issues Staff Did Not Include in the Consolidated Lists

As stated above, staff did not include in its consolidated issues list for Phase II those issues parties raised that are beyond the scope the Commission laid out in Order No. 05-584, with the two exceptions noted.

Interconnection. Some parties' initial issues lists identified interconnection technical standards, procedures and agreements as a general issue for Phase II. It is staff's understanding that parties have agreed that interconnection issues should be addressed in a separate investigation opened at a later date. However, parties agreed to include in Phase I the specific issue of interconnection cost assumptions for the proxy plant used in calculating avoided costs.

Staff stated in its report on removing barriers to distributed generation, presented to the Commission at its March 8, 2005, public meeting, that we plan to request that an interconnection investigation be opened. Moreover, the Commission included among its 2005-06 objectives a review of interconnection policies and technical standards, and Section 1254 of the Energy Policy Act of 2005 requires it.

Order No. 05-584 at 5 states: "Other issues that had been identified by the Commission Staff (Staff) for potential consideration were left to be taken up in a subsequent phase of the proceeding *or in a separate proceeding.*" [Emphasis added] The footnote to this sentence refers to interconnection issues. Further, interconnection is not included in the list of issues the Commission identified for investigation in the second phase of UM 1129. *See* Order No. 05-584 at 3-4.

Staff will ask the Commission to open an investigation into interconnection technical standards, procedures and agreements in 2006. Other states and FERC have taken up such investigations separately from PURPA-related proceedings. Moreover, this type of investigation addresses electrical engineering issues and is highly complex and time-consuming. Thus, it would unnecessarily burden Phase II of UM 1129.

Imputed and direct debt. PacifiCorp asks the Commission to take up the issue of imputed and direct debt in Phase II. Specifically, the company requests the following issue be included:

Impact of imputed debt and/or direct debt incurred by Company and ratepayers from new QF contracts as a result of new accounting rules – Emerging Issues Task Force (“EITF”) 01-08 and Financial Interpretation No. 46 (“Fin 46”) and how it should be treated in avoided cost adjustments.

The company raised the concept of debt imputation as a potential category of project-specific costs or factors in its opening brief in Phase I of UM 1129. *See* PacifiCorp Brief at 11. As staff stated in its reply brief, debt imputation is best addressed in rate cases, not through an adjustment to the QF contract under PURPA. Further, “debt imputation” is not one of the factors delineated under 18 CFR § 292.304(e). *See* Staff Reply Brief at 4-5.

The Commission decided this issue for standard contracts for QFs 10 MW and smaller. *See* Order No. 05-584 at 38-39. The Commission did not include debt imputation for non-standard contracts in its list of issues for investigation in Phase II.

Staff is not certain that PURPA regulations allow for consideration of direct or imputed debt in calculating avoided costs. We found no case law that would confirm PacifiCorp's assertion that direct or imputed debt can and should be taken into account.

On the technical merits, staff most recently explained its position on imputed debt in comments in Commission investigations related to competitive bidding (UM 1182) and PacifiCorp's Transition Adjustment Mechanism (UE 173). In our comments, we referred to staff's Memo Regarding Debt Imputation and Power Purchase Agreements, dated June 6, 2005, and presented at a Commission UM 1182 workshop on June 8, 2005.

In the memo, staff emphasized that a credit rating agency's formula for balance sheet debt imputation for long-term purchase power agreements is heavily influenced by the agency's perception of the likelihood that the utility will receive timely recovery of power purchase costs. If the power purchase agreement does not put downward pressure on the utility's credit rating, the amount of debt imputed by rating agencies is irrelevant.

The Commission's regulation of the electric utilities can be fairly characterized as providing for the timely recovery of power purchase costs, including power purchases from QFs. Staff is not aware of any past disallowances by the Commission for QF contracts. The Commission's treatment of PacifiCorp's power costs during the Western energy crisis of 2000-01 is another example of supportive regulation. *See* Order No. 02-469. The Commission's recent approval of PacifiCorp's request to annually update its normalized net variable power costs included in rates as part of its Transition Adjustment Mechanism is further indication of the Commission's support for timely recovery of net variable power costs. *See* Order No. 05-1050. PGE has had a similar annual power cost update, the Resource Valuation Mechanism, for several years.

The Commission's current regulation of the electric utilities may already be sufficiently supportive to avoid downward pressure on their credit rating related to long-term purchase power agreements. In Docket Nos. UE 165 and UE 173, the Commission is considering an automatic adjustment clause for PGE and PacifiCorp to address differences in actual power costs vs. normalized power costs included in rates. Adoption of such a power cost adjustment would provide even further indication of the Commission's commitment to timely recovery of power costs. However, staff is not convinced that credit rating agencies need further indication of the Commission's commitment in that regard.

DATED this 21st day of October 2005.

Respectfully submitted,

HARDY MYERS
Attorney General

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Commission of Oregon

**UM 1129 – Phase I Compliance Investigation
Staff’s Proposed Consolidated Issues List
October 11, 2005**

Issues related to all electric companies

1. Are the compliance filings consistent with Order No. 05-584? [ICNU]
2. Are the compliance filings consistent with the assumptions used in the utilities’ resource acquisition or certification proceedings? [ICNU]
3. Are the standard terms and conditions in the compliance filings reasonable? [ICNU]
4. Should the Commission adopt criteria for determining whether multiple energy projects are in fact a single Qualifying Facility to protect the intent of Order No. 05-584, which directs that only projects 10 MW and smaller are eligible for standard avoided cost rates and a standard contract? For example, if a 60 MW wind farm is divided into six 10 MW installments in close proximity to one another, all built in the same calendar year, and with underlying ownership structures containing similar persons or entities, should each installment be eligible for standard rates and standard contracts? [Staff] What criteria determine when a Qualifying Facility is 10 MW or less and eligible for the standard contract when the project/site has multiple generating units? [PGE]
5. Do provisions in the standard contracts related to creditworthiness, security, damages and termination reasonably comply with the letter and intent of Order No. 05-584, including:
 - a. Are the security provisions reasonable? For example:
 - i. Is it consistent with Order No. 05-584 that the security requirements in § 4.1.6 of Idaho Power’s contract are “at a minimum,” allowing for unspecified conditions at the sole discretion of Idaho Power? [ODOE, Sherman County/Simplot]
 - ii. Is it reasonable to require a letter of credit for potential environmental remediation, and for what amount, in cases where a Qualifying Facility selects the senior lien or step-in rights security option, as in PacifiCorp’s standard contract? [Staff, ODOE]
 - iii. Should PGE § 7 and Idaho Power § 4.1 define the security options of cash escrow, senior lien, step-in-rights and letter of credit? [ODOE]
 - iv. Is the definition of Default Security in § 1.9 of PacifiCorp’s contract consistent with Order No. 05-584 at 45? [Sherman County/Simplot]
 - v. Is the definition of Letter of Credit in § 1.17 of PacifiCorp’s contract consistent with Order No. 05-584 at 45? [Sherman County/Simplot]

- b. Are the default and termination provisions reasonable? For example:
- i. How should the “contracted for” amount of energy be determined, and should it be consistent in all standard contracts? [ODOE]
 - ii. Do net delivery requirements of standard contracts comply with Order No. 05-584 that requires firm and intermittent resources to be valued equally? [ODOE]
 - iii. Should reduced resource availability due to weather-related events trigger default provisions for renewable resource projects that rely on natural motive force? [ODOE, Sherman County/Simplot]
 - iv. Does a requirement to specify monthly and annual minimum generating output – below which the Qualifying Facility would be in default – reasonably comply with the Commission’s order, even if output levels are based on projections under adverse natural motive force conditions? Should the Commission instead set a minimum annual delivery requirement, in percent, to be applied to the Qualifying Facility’s expected generating output? [Staff]
 - v. Is it reasonable for the utility to terminate the contract for “under-deliveries” due to weather, or for delays in producing power? [ODOE]
 - vi. Is it consistent with the order to establish that the Qualifying Facility has breached the agreement if the facility does not meet the specified commercial operation milestones, with no exception during the utility’s resource sufficiency period, as in PGE’s standard contract? [Staff]
 - vii. Should § 11.3.3 of PacifiCorp’s contract be limited in applicability only to those situations where the utility is in a deficit situation per its Integrated Resource Plan? [Sherman County/Simplot]
 - viii. Should § 11.4 of PacifiCorp’s contract be modified to conform to Order No. 05-584 at 45 wherein under-deliveries of power are made up by reducing the payments in future years, rather than 15 days from the date PacifiCorp sends the seller an invoice? [Sherman County/Simplot]
 - ix. Is it reasonable that § 11.4.1 of PacifiCorp’s contract imposes damages for under-delivery or production delays during the utility’s resource sufficiency period? [ODOE]
 - x. Should PGE’s and Idaho Power’s default provisions take into account sufficient monies to provide for continued facility operations and debt payment in the event future payments are temporarily reduced as a penalty for under-delivery, as in PacifiCorp’s contract (§ 11.4.2)? [ODOE]
 - xi. Is it reasonable for PacifiCorp to limit the opportunity to cure period to a time certain after the default (§ 11.2.2)? Should the company instead use the phrase “commercially reasonable time” as in Idaho Power’s contract (§ 18.2.1)? Should the opportunity to cure provisions in PacifiCorp’s contract apply to all events of default and not be limited to just § 11.1.1 and § 11.1.5? Should PGE’s contract provide the opportunity to cure in § 10? Should PGE’s contract provide for reciprocal default terms as in PacifiCorp’s and Idaho Power’s contracts? [Sherman County/Simplot]

- xii. Is it consistent with PURPA that § 11.3.2 of PacifiCorp’s contract disqualifies a QF that has been terminated, due to the QF’s default, from selling to the utility until after the expiration date in the contract? Does this provision extend to a lender that forecloses on the facility and becomes the new Seller? Is it reasonable for PGE to restrict a Qualifying Facility, once terminated, from selling under any other terms than the terminated agreement, as specified in § 10.4? [ODOE, Sherman County/Simplot]
 - xiii. Is it reasonable for Idaho Power to terminate the contract for failure to deliver a certain level of Net Energy in any contract year (§ 6.3), given that Order No. 05-584 states that the utilities are to purchase all of the output from Qualifying Facilities, and the Shortfall Energy provisions of the contract keep the company whole in such a situation? [Sherman County/Simplot]
 - xiv. Are PGE’s and Idaho Power’s contracts in compliance with Order No. 05-584, which states at 57, “We direct utilities to insert a clause in any QF contract that specifies that QF contracts do not terminate upon the repeal of PURPA, unless such termination is mandated by federal or state law”? [ODOE]
- c. Is the basis for calculating damages sound, and is the proposed level of damages reasonable both for an event of default and termination resulting from default? [Staff]
For example:
- i. Is the definition of Net Replacement Power Costs in § 1.25 of PacifiCorp’s contract consistent with Order No. 05-584 at 45? [Sherman County/Simplot]
 - ii. Should the Shortfall Energy Repayment Price be zero in § 7.3 of Idaho Power’s contract if the utility is energy surplus as defined in its Integrated Resource Plan? [Sherman County/Simplot]
 - iii. Is it reasonable for Idaho Power to impose on the Qualifying Facility interest expenses on recoupment power costs (§ 7.5)? [Sherman County/Simplot]
 - iv. Is the use of Net Energy Amount in Idaho Power’s contract (§ 1.12 and 6.2) reasonable for determining the Shortfall Energy and damages (Article VII)? [ODOE]
- d. Are the creditworthiness terms reasonable? For example:
- i. Is it reasonable for PacifiCorp and Idaho Power to impose security and creditworthiness requirements in addition to representations that the Qualifying Facility has good credit, is current on existing debt obligations and has not been a debtor in the last two years? [ODOE, Sherman County/Simplot]
 - ii. Is it reasonable for PacifiCorp to require Qualifying Facilities larger than 3 MW to have a long-term debt credit rating by a credit agency in order to meet credit requirements? [ODOE, Sherman County/Simplot]
 - iii. Is it reasonable that PGE requires a Qualifying Facility to warrant that it will remain current on financial obligations to others throughout the contract term, or post default security? [ODOE, Sherman County/Simplot]

- iv. Is it clear in the utilities' contracts that security measures only come into play if a Qualifying Facility is unable to make these creditworthiness representations? [Sherman County/Simplot]
 - v. Is the definition of Credit Requirements in § 1.8 of PacifiCorp's contract consistent with Order No. 05-584 at 45? [Sherman County/Simplot]
- e. Should the indemnity provisions in § 12.1 of PacifiCorp's contract be consistent for PacifiCorp and the Seller? Specifically, should PacifiCorp be required to indemnify the Seller "at the Point of Delivery" rather than "after the Point of Delivery"? [Sherman County/Simplot]
6. Should tariffs for Qualifying Facilities include a detailed list of procedures, including timelines, to comply with the Commission's directive that such tariffs contain "full details about the process to enter into a standard contract or a negotiated contract," per Order No. 05-584 at 59? If yes, which procedures and timelines should be included at a minimum, and what timelines are appropriate? [Staff]
7. Do the administrative and technical requirements in the standard contracts reasonably comply with the intent of Order No. 05-584? For example, should all Qualifying Facilities be required to hire a licensed professional engineer to verify that the facility operates as specified? [Staff] Is it reasonable to require that the licensed engineer be unaffiliated with the project as in § 1.18 of PacifiCorp's contract and § 1.10 of PGE's contract? [Sherman County/Simplot]
8. Should increased Qualifying Facility output resulting from changes in operation of generating equipment — for example, improving its efficiency or operating at a higher power factor — qualify for the full avoided cost prices in the tariff as of the effective date of the agreement? [Staff] Should increased generation resulting from efficiency improvements that increase the project's output above the nameplate rating specified in the contract be entitled to full avoided cost prices, so long as the project's nameplate rating remains at or below 10 MW? If so, should the increased generation be priced at the full avoided cost in the tariff as of the effective date of the agreement or as of the date of the improvement? Can Seller change the generator nameplate rating if equipment replacement is necessary? [ODOE]
9. Are PacifiCorp's, Idaho Power's and PGE's insurance requirements reasonable and appropriate? For example:
- a. Is it reasonable and appropriate for PacifiCorp and Idaho Power to require the Qualifying Facility to carry insurance only with companies rated not lower than "A-" by the A.M. Best Company? Is it reasonable and appropriate for PGE to require the Qualifying Facility to carry insurance only with companies rated no less than "A" by the A.M. Best Company? [Staff, Sherman County/Simplot]
 - b. Should the utilities instead require Qualifying Facilities to use insurance companies "that are typically and reasonably used for the type of generating equipment used by the Facility"? [Sherman County/Simplot]

- c. Is it reasonable that PacifiCorp’s standard contract requires that a Qualifying Facility maintain insurance coverage provided on a “claims-made” basis for a minimum of five years after the completion of the agreement? [Staff]
10. Should there be a simplified form of standard contract for small producers (200 kW or less)? Specifically:
- a. 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 include PGE §§ 3.1.8 - 3.1.10, 4.2, 4.3; PacifiCorp §§ 1.18, 4.1-4.2.
 - 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 a floating price which equals the highest price among the indexed options (Deadband Index Gas Price, Index Gas price, Mid-C Index Rate Price) and selection of an option by small QFs at shorter intervals than life of agreement (e.g., quarterly or yearly).
 - c. What protections from QF bankruptcy, default, and impairment of credit are necessary to balance and protect the interests of the QF and the purchasing utility's ratepayers?
 - d. What adjustments are necessary or fair regarding metering, metering equipment, and faulty metering resulting in billing errors?
 - e. Regarding default:
 - i. What constitutes default by either party?
 - ii. What dispute resolution methods are reasonable?
 - iii. What self-help or cure is available?
 - iv. What should be the conduct after termination?
 - 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?
 - g. Should there be a standard contract for new small QFs which differs in any way from a standard contract for existing small QFs?
[Fair Rate Coalition]
11. Should lack of water and lack of wind be included as events of Force Majeure for wind and run-of-river hydro projects? [Sherman County/Simplot]

12. Should the utilities file standard form contracts for the purchase of QF power that is wheeled to their systems over a third-party transmission system? Should any such agreements address issues such as where title to the power changes hands and explicitly state that the purchasing utility purchases the QF's schedule off of the transmitting utility's system? [Sherman County/Simplot]
13. Can Seller choose to service some or all of its own load that is not plant parasitic load to determine Net Output? [ODOE] Is it reasonable and appropriate for the Seller to deduct load other than station use from Net Output, as in § 1.24 of PacifiCorp's contract and § 1.14 in PGE's contract? [Sherman County/Simplot]
14. If a utility and a Qualifying Facility Seller under 10 MW mutually agree to change a few terms of the standard contract for a facility but still use the applicable standard tariff, is this arrangement considered a PURPA contract in future ratemaking proceedings? [ODOE]

Issues related to Portland General Electric and PacifiCorp only

15. Are the natural gas price forecasts that Portland General Electric and PacifiCorp used for determining avoided costs reasonable? [Staff, ICNU]
16. What are the appropriate natural gas hubs? [ICNU]
17. Are the forward price projections that Portland General Electric and PacifiCorp used to determine the on-peak and off-peak avoided costs during their projected resource sufficiency periods reasonable? [Staff]
18. Issues related to the resource sufficiency/deficiency period, including but not limited to the following:
 - a. How are the periods defined?
 - b. What loads were used to compute the period?
 - c. Are the load forecasts recent and accurate?
 - d. Can a utility that is chronically short on capacity and continuously building capacity be considered sufficient?
 - e. Should capacity forecasts impact the sufficiency/deficiency periods?
 - f. Should PacifiCorp develop its sufficiency/deficiency period on a system-wide basis?
 - g. Is it appropriate to include short-term firm purchases in baseload capacity when calculating resource sufficiency?
 - h. Is it appropriate that PacifiCorp determines the resource sufficiency period for its avoided costs filing in a different manner than its resource needs in the Integrated Resource Planning process?
 - i. Is it appropriate that PacifiCorp's compliance filing uses CY 2010 as its first deficit year for determining avoided costs, when the filing shows a deficit of 561 MW in August 2005, growing to a 1,804 MW deficit in July 2009?
 - j. Issues related to how the utilities should forecast Qualifying Facility capacity when determining when the utility will be resource sufficient or resource deficient for the purposes of avoided cost calculations
[Staff, ICNU]
19. Issues related to the utilities' proxy units in the avoided cost calculation. For example:
 - a. Are the assumptions regarding the capacity factors for combined cycle combustion turbines (CCCTs) reasonable?
 - b. Are the assumptions for the costs of CCCTs reasonable and consistent with other planning assumptions?
 - c. Should altitude of new resource locations be considered in developing avoided costs?
 - d. Are the interconnection costs assigned to the proxy plant that the utilities use to calculate their avoided costs reasonable?
[ICNU]
20. Are the utilities' elements, conditions, computer model assumptions, and inputs underlying the avoided cost calculations reasonable? [ICNU]

21. If the Commission's decision in AR 495 allows, should standard contracts contain a waiver of claim to ownership of environmental attributes of delivered power as provided in § 8.1 of Idaho Power's contract? [ODOE]
22. Is it reasonable for PacifiCorp to correct for meter reading errors "either fast or slow" as specified in § 8.3 of the contract, instead of only "slow," given that PacifiCorp designs, furnishes, installs, owns, inspects, tests, maintains, and replaces all metering equipment as described in § 8.1? Should § 8.3 of PGE's contract be similarly modified? [Sherman County/Simplot]

Issues related to PacifiCorp only

23. Should CCCT costs be based on an Oregon plant? [ICNU]
24. Is PacifiCorp's avoided cost filing consistent with its avoided cost filings in other jurisdictions? [ICNU]
25. Issues related to the application of the Revised Protocol. [ICNU]
26. Should "By _____, Seller" in § 2.2.2 of PacifiCorp's contract be replaced with "Upon completion of construction, Seller" to harmonize with §6.1? [Sherman County/Simplot]
27. Should "Seller's shareholders, directors and officers have" in § 3.2.3 of PacifiCorp's contract be replaced with "Seller has" to accommodate all types of entities, rather than only corporations? [Sherman County/Simplot]

Issues related to PGE only

28. Is the reference to § 1.3 in § 2.2.2 of PGE's contract a typographic error and, if so, what is the correct reference and is it appropriate? [Sherman County/Simplot]
29. Is clarification needed in § 2.3 of PGE's contract that the Seller may choose a term up to 20 years? [Sherman County/Simplot]
30. Are prohibitions against any liens or encumbrances on the project other than for third party financing in § 3.1.5 of PGE's contract too restrictive? [Sherman County/Simplot]
31. Is it appropriate to provide flexibility in the Seller's notice requirements for maintenance in § 6.2 of PGE's contract by adding the words "when practicable" after "Off-Peak Hours"? [Sherman County/Simplot]
32. Is the blanket release in PGE's contract (§ 20.2) for claims related to the facility, whether known or unknown, reasonable? [Sherman County/Simplot]

Issues related to Idaho Power only

33. Is it reasonable for Idaho Power to require in § 3.3 that a hydroelectric Qualifying Facility warrant that it has a FERC license at the time of execution of the agreement, rather than warrant it will have a FERC license prior to the first operation date? [Sherman County/Simplot]

34. Is it reasonable for Idaho Power to seek to acquire rights of way and access to the Seller's facility for utility lines and easements totally unrelated to the facility (§ 13.2 through § 13.4)? [Sherman County/Simplot]

UM 1129 - Phase II
Staff's Proposed Consolidated Issues List
October 11, 2005

Issues Directed by the Commission (Order No. 05-584)

1. Development of negotiation parameters and guidelines for nonstandard QF contracts. For example:
 - a. What contract length should Qualifying Facilities larger than 10 MW be entitled to? [Order No. 05-584 at 17]
 - b. How should QF power supply commitments differentiate between “as available” and “legally enforceable obligations” for delivery of energy and capacity? [PGE]
 - c. How should “firm” or “non-firm” supply commitments be defined and differentiated through contractual default and damages provisions? [PGE]
 - d. How should avoided costs be adjusted for factors, such as those described in 18 CFR § 292.304, for a Qualifying Facility’s specific power supply attributes and commitments? [PGE]
 - e. Regarding PacifiCorp’s Schedule 38 for Qualifying Facilities larger than 10 MW, are the procedures for negotiating avoided costs, schedules for negotiations, and the information to be exchanged by PacifiCorp and the Qualifying Facility reasonable? [ICNU]
 - f. Can the utilities adjust the avoided cost calculations for Qualifying Facilities over 10 MW based on factors that have not been approved by the Oregon Public Utility Commission? [ICNU]
2. In the event of the inability of a QF to establish creditworthiness, determination of an appropriate amount of default security to be required.
3. Further exploration of how the calculation of avoided cost should reflect the nature and quality of QF energy. Specifically:
 - a. How should firm vs. non-firm commitments and integration of intermittent resources affect the calculation of avoided costs? [Order No. 05-584 at 39]
 - b. Costs and contractual provisions necessary to address purchases from QF projects that are located outside the utility’s control area [PacifiCorp]
4. Further exploration of a Mechanical Availability Guarantee (MAG). For example, are avoided cost prices affected by a Mechanical Availability Guarantee? [PGE]

5. Further exploration of market pricing options and alternatives to using nameplate capacity to determine the size of a QF project for standard contract eligibility purposes, including:
 - a. Should PacifiCorp offer a market pricing option? [Order No. 05-584 at 35; PacifiCorp]
 - b. Provide clear definition of “nameplate capacity” if that is retained as basis for defining eligibility for standard contracts and avoided cost rates. [PacifiCorp]
6. Cap on amount of default losses that can be recouped, pursuant to future QF contract payment reductions.*
7. Liability insurance for QFs with a design capacity at or under 200 kW.
8. Negotiation parameters and guidelines for “simultaneous sale and purchase” QF contract.
9. Negotiating “net output sales” for non-standard contracts.
10. Further exploration of Staff’s role in the informal dispute resolution of QF contract disputes. Related to that issue, what is the role of the Commission in dispute resolution during contract negotiations and during the term of the power purchase agreement? [PGE]

Other Issues

11. Should competitive bidding be used to set pricing for Qualifying Facilities greater than a certain size (e.g., larger than 100 MW) if the utility has recently completed an RFP, or a bidding process is in progress or imminent? If so, how? [UM 1182 issue moved with consent of UM 1182 parties]
12. Do provisions of the Energy Policy Act of 2005 affect the rules regarding new contracts with Qualifying Facilities? Specifically, should an Oregon electric company be required to enter into a new contract with a Qualifying Facility that is located in the service territory of an electric utility that has been relieved by FERC of a mandatory purchase obligation under PURPA? [PGE]

1 **CERTIFICATE OF SERVICE**

2
3 I certify that on October 21, 2005, I served the foregoing upon the parties hereto by
4 sending a true, exact and full copy by postage prepaid, regular mail, or shuttle mail, and by
5 electronic mail:

6

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