

1 the methodologies and calculations required by Order No. 05-584. The scope of this proceeding
2 is limited to those matters, and will not include the examination of the underlying methodologies
3 adopted in Order No. 05-584.” Prehearing Conference Memorandum (issued September 17,
4 2009).

5 **Argument**

6 The Joint Applicants basically request that the Commission allow a full exploration of all
7 issues related to PacifiCorp’s avoided cost filing, including a complete review of the
8 methodology used for calculating such costs that the Commission set forth in the orders arising
9 from PUC Docket No. UM 1129. In support of its position, the Joint Applicants assert that
10 anything less than a complete review of the methodology would constitute an abdication of the
11 Commission’s responsibility to ensure that rates for “qualified facilities” (QFs) are correct.
12 Application at 5. The Joint Applicants then provide a brief analysis of PacifiCorp’s filing as
13 alleged support of their position that the methodology does not accurately value the incremental
14 cost of energy and capacity. *Id.* at 6-7. Finally, the Joint Applicants note that the current UM
15 1396 proceeding is considering possible revisions to the resource sufficiency/deficiency part of
16 the UM 1129 methodology, which may impact the UM 1442 proceeding. *Id.* at 8.

17 In reply, staff observes that a primary purpose of the UM 1129 proceedings was to set a
18 methodology for the utilities to use in preparing their periodically-submitted avoided cost filings.
19 Clearly, decreeing a required methodology for the preparation of such filings has several
20 benefits. For example, a pre-determined methodology allows the utilities to prepare their studies
21 in accordance with the Commission’s requirements and not try to satisfy a vague or moving
22 target. Further, setting the methodology ahead of time allows the required review of the filing to
23 proceed in an expeditious fashion. Indeed, the Commission views an efficient avoided cost
24 review process as beneficial to both the utilities and to the QFs who must make contractual
25 decisions based upon those rates. *See generally* Order No. 05-584 at 11, 26-30; Order No. 06-
26 538 at 50-54.

1 During the UM 1129 proceedings, the parties, which included staff, the utilities and some
2 of the Joint Applicants, vigorously presented their various proposals for their respective
3 preferred avoided cost methodologies. The UM 1129 proceedings were lengthy and highly
4 adversarial, resulting in several phases of the docket and accompanying Commission orders.

5 Fast-forward to UM 1442 where PacifiCorp has submitted an avoided cost filing that is
6 based upon the required UM 1129 methodology. Because the Commission has already decreed
7 the methodology for the company to use, UM 1442 may be expeditiously and efficiently
8 reviewed. The review is much-simplified as it consists mainly of analyzing the inputs
9 PacifiCorp used within the UM 1129 methodology. This simplified analysis will allow the
10 proceeding to be concluded under the adopted procedural schedule with a Commission order
11 issued before the end of the year.

12 Conversely, the Joint Applicants' approach would require a full review of the
13 methodology with each new avoided cost filing. Indeed, it is possible that the Joint Applicants'
14 proposal would first require the creation of a new "correct" methodology and then next
15 determine whether the utility's inputs yield a correct result under this previously-unknown
16 method. The Joint Applicants fail to present a persuasive case as to why the Commission should
17 adopt this overly complex "Rube Goldberg" type-procedure.

18 Further, there is no reason to think that a complete review of the methodology the
19 Commission set in the UM 1129 proceedings would be any less lengthy and adversarial than the
20 original UM 1129 proceedings. As such, the Joint Applicants' approach could potentially result
21 in a multi-year docket like that required in UM 1129. Even worse, it is possible that such multi-
22 year dockets could overlap each other, resulting in confusing results based upon stale
23 information. Such a result would be a hopeless mess.

24 As stated earlier, one of the Commission's primary goals for the UM 1129 proceedings
25 was to avoid the procedural quagmire inherent in a process such as the Joint Applicants'
26 advocate. *See* Order No. 05-584 at 11 ("the Commission has consistently interpreted its PURPA

1 mandate to be the adoption of policies and rules that promote QF development, using among
2 other tactics, accurate price signals and information to developers, while ensuring that utilities
3 pay no more than avoided costs”). Clearly, overlapping, multi-year avoided cost proceedings
4 would be contrary to and inconsistent with the Commission’s UM 1129 primary goal of creating
5 a method to set avoided cost rates in an expeditious, efficient manner so that both the utilities and
6 the QFs can get on with their respective businesses.

7 For these reasons, staff recommends the Commission deny the Joint Applicants request to
8 conduct an investigation into the UM 1129 methodology within the context of reviewing the
9 avoided cost filings periodically made by the utilities. The Commission may, of course, review
10 the UM 1129 methodology should it desire, but staff strongly suggests such a review should
11 occur within the context of a separate, generic investigation.

12 The Joint Applicants also assert that ORS 757.210 requires a full investigation of all
13 issues with each avoided cost filing. Application at 9. In reply, staff notes the Commission has
14 never determined that an avoided cost filing constitutes a rate filing under ORS 757.210.
15 Without delving deeply into this issue, staff observes that there are strong arguments supporting
16 a conclusion that ORS 757.210 does not apply to avoided cost filings. In brief, avoided cost
17 filings are submitted under ORS 758.525(1), not ORS 757.210. Further, avoided cost filings are
18 used to determine the rates paid to QFs for selling energy to the utilities. Conversely, ORS
19 757.210 typically concerns schedules filed to set rates for services the utility provides to its
20 customers. As to process matters, ORS 758.525(1) simply states that “prices contained in the
21 schedules filed by the public utilities shall be reviewed and approved by the commission.”
22 Under this statute there is no *requirement* for a full investigation with every avoided cost filing
23 of all potential issues. The Commission may lawfully resolve certain matters, such as creating a
24 methodology for setting avoided costs rates, in a generic order arising from a general
25 investigation, such as was done through the UM 1129 proceedings.

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1 Finally, staff recognizes that the order the Commission will issue after the conclusion of
2 the UM 1396 proceeding could potentially impact the UM 1442 proceeding. However, the
3 Commission may properly decide to apply its UM 1396 order prospectively should it change the
4 UM 1129 methodology in a material way. Staff suggests such a decision would be appropriate
5 here as it would allow for the UM 1442 proceeding to be concluded in an efficient manner and
6 within a reasonable timeframe.

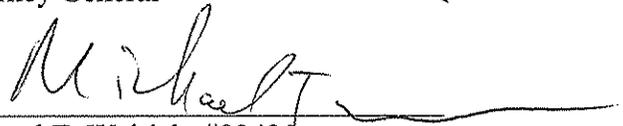
7 **Conclusion**

8 For the reasons stated, staff asks the Commission to deny the Joint Applicants'
9 Application in its entirety.

10 DATED this 15th day of October 2009.
11

12 Respectfully submitted,

13 JOHN R. KROGER
14 Attorney General

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16 Michael T. Weirich, #82425
17 Assistant Attorney General
18 Of Attorneys for the Public Utility Commission
19 of Oregon
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1 **CERTIFICATE OF SERVICE**

2 I certify that on October 15, 2009 I served the foregoing STAFF REPLY upon the parties
3 in this proceeding by electronic mail and by sending a true, exact and full copy by regular mail,
4 postage prepaid, or by hand-delivery/shuttle, to the parties accepting paper service.

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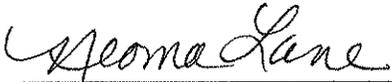
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Neoma Lane
Legal Secretary
Department of Justice
Regulated Utility & Business Section

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 1442

4 In the Matter of the

5 PUBLIC UTILITY COMMISSION OF
6 OREGON

7 Investigation to determine if PACIFIC
8 POWER's rate revision has been consistent with
the methodologies and calculations required by
Order No. 05-584.

STAFF'S REPLY IN OPPOSITION TO
APPLICATION FOR RECONSIDERATION

9
10 **Background**

11 Staff of the Public Utility Commission of Oregon (Commission) submits its Reply in
12 Opposition to the request of the Joint Applicants that the Commission grant reconsideration or
13 clarification, or both, of the Commission's prior decree setting the scope and schedule for this
14 docket (Application).¹

15 As a quick summary of the relevant procedural background, at its Public Meeting held
16 September 8, 2009, the Commission adopted staff's recommendation that this investigation be
17 opened but that it "be limited to the issue of whether the company's avoided costs were
18 calculated in compliance with the methodologies adopted by the Commission in Docket UM
19 1129." The Commission issued this mandate after hearing arguments to the contrary from some
20 of the parties that now comprise the Joint Applicants.

21 Subsequently, at the Prehearing Conference held on September 16, 2009, Chief
22 Administrative Law Judge Michael Grant, again after hearing argument to the contrary, affirmed
23 the Commission's prior order, expressly ruling "The [Commission] opened these investigations
24 to determine whether the avoided cost filings made by PacifiCorp...and PGE are consistent with

25 _____
26 ¹ The Joint Applicants consist of the Industrial Customers of Northwest Utilities, Biomass One,
Co-Gen II LLC, the Community Renewable Energy Association, and the Renewable Energy
Coalition.

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2 is limited to those matters, and will not include the examination of the underlying methodologies
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12 Application at 5. The Joint Applicants then provide a brief analysis of PacifiCorp’s filing as
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5 here as it would allow for the UM 1442 proceeding to be concluded in an efficient manner and
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7 **Conclusion**

8 For the reasons stated, staff asks the Commission to deny the Joint Applicants'
9 Application in its entirety.

10 DATED this 15th day of October 2009.

11 Respectfully submitted,

12 JOHN R. KROGER
13 Attorney General

14
15 s/Michael T. Weirich
16 Michael T. Weirich, #82425
17 Assistant Attorney General
18 Of Attorneys for the Public Utility Commission
19 of Oregon