

# McDowell & Rackner PC



AMIE JAMIESON  
Direct (503) 595-3927  
amie@mcd-law.com

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## VIA ELECTRONIC FILING

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
Salem, OR 97308-2148

**Re: Docket No. UM 1276**

Enclosed for filing in the above-referenced proceeding is the Joint Utilities' Version of Staff Proposal. A copy of this filing has been served on all parties to this proceeding as indicated on the attached service list.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amie Jamieson".

Amie Jamieson

Enclosure

cc: Service List

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1276 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

Susan K. Ackerman  
susan.k.ackerman@comcast.net

Lowrey R. Brown  
Citizens' Utility Board of Oregon  
lowrey@oregoncub.org

Randall J. Falkenberg  
RFI Consulting Inc.  
consultrfi@aol.com

Melinda J. Davison  
Davison Van Cleve PC  
mail@dvclaw.com

John Demoss  
turbineone@earthlink.net

Jason Eisdorfer  
Citizens' Utility Board of Oregon  
jason@oregoncub.org

Judy Johnson  
Public Utility Commission of Oregon  
PO Box 2148  
Salem OR 97308-2148  
judy.johnson@state.or.us

Ann L. Fisher  
AF Legal & Consulting Services  
PO Box 25302  
Portland OR 97298-0302  
energlaw@aol.com

Douglas Tingey  
Portland General Electric  
121 SW Salmon St 1WTC1301  
Portland, OR 97204  
richard.george@pgn.com

Ann English Gravatt  
Renewable Northwest Project  
ann@rnp.org

Natalie Hocken  
PacifiCorp  
natalie.hocken@pacificorp.com

Robert Jenks  
Citizens' Utility Board of Oregon  
bob@oregoncub.org

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Idaho Power Company  
John R. Gale  
[rgale@idahopower.com](mailto:rgale@idahopower.com)

Sandra D. Holmes  
[sholmes@idahopower.com](mailto:sholmes@idahopower.com)

Barton L. Kline  
[bkline@idahopower.com](mailto:bkline@idahopower.com)

Karl Bokenkamp  
[kbokenkamp@idahopower.com](mailto:kbokenkamp@idahopower.com)

Lisa D. Nordstrom  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

Patrick Hager  
Rates & Regulatory Affairs  
Portland General Electric  
121 SW Salmon St 1WTC1301  
Portland, OR 97204  
[pge.opuc.filings@pqn.com](mailto:pge.opuc.filings@pqn.com)

John W. Stephens  
Esler Stephens & Buckley  
[stephens@eslerstephens.com](mailto:stephens@eslerstephens.com)

Lisa Schwartz  
Oregon Public Utility Commission  
PO Box 2148  
Salem OR 97308-2148  
[lisa.c.schwartz@state.or.us](mailto:lisa.c.schwartz@state.or.us)

DATED: December 21, 2007.

Robert D. Kahn  
NW Independent Power Producers  
[rkahn@nippc.org](mailto:rkahn@nippc.org)

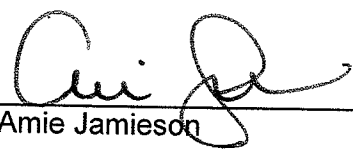
Michelle R. Mishoe  
Pacific Power & Light  
[michelle.mishoe@pacificcorp.com](mailto:michelle.mishoe@pacificcorp.com)

Oregon Dockets  
PacifiCorp  
[oregondockets@pacificcorp.com](mailto:oregondockets@pacificcorp.com)

Gregory W. Said  
[gsaid@idahopower.com](mailto:gsaid@idahopower.com)

Michael T. Weirich  
Department of Justice  
Regulated Utility & Business Section  
1162 Court St NE  
Salem, OR 97301-4096  
[michael.weirich@doj.state.or.us](mailto:michael.weirich@doj.state.or.us)

Steven Weiss  
Northwest Energy Coalition  
[steve@nwenergy.org](mailto:steve@nwenergy.org)



Amie Jamieson

McDowell & Rackner  
Of Attorneys for Idaho Power

**JOINT UTILITIES' VERSION OF STAFF PROPOSAL**  
**FILED ON BEHALF OF PACIFICORP, IDAHO POWER, AND PGE**

**UM 1276**

**Investigation Into Performance-Based Ratemaking Mechanisms**

December 21, 2007

**Type of Mechanism:** Utility incentive for eligible power purchase agreements (PPAs)

**Incentive level:** 10 percent ~~pre-tax~~ after-tax adder on Oregon's share of forecasted costs of the PPA excluding fuel-related costs, with an annual true-up of the incentive for differences between forecasted and actual costs of the PPA for the previous year

- **Joint Utilities' Comment:** A utility's return on investment is calculated on an after-tax basis. The conservation precedents upon which the incentives in this docket are based recognized this fact and the importance of consistent tax treatment between conservation resources and other resources so as to neutralize the effect of taxes in the incentive proposal. See Order No. 94-560, UM 551. This supports a construction of the 10 percent adder as an after-tax value, not a pre-tax value.

**Basis:** As in PacifiCorp's and NIPPC's proposals, staff's incentive proposal is based upon prior Commission decisions related to incentives for conservation. The 10 percent adder recognizes the risk mitigation value of PPAs, based on a similar value applied to conservation for determining cost-effectiveness.<sup>1</sup> The Commission explicitly recognized that the 10 percent adder accounts for the value of conservation in reducing risk and uncertainty.<sup>2</sup> However, as in PacifiCorp's proposal, the utility will receive an incentive in rates.

**Eligibility Criteria:**

- 1) Only new PPAs and renewals as of the date of the Commission's authorization of the incentive are eligible. The PPA may be for energy, capacity, or both.
- 2) The acquisition of the PPA must comply with ~~be selected under a competitive bidding process that conforms to the Commission's guidelines (Order No. 06-446).~~<sup>3 4</sup>

<sup>1</sup> See ORS 469.649(3).

<sup>2</sup> See Order No. 94-590 (UM 551) at 14. Other benefits of PPAs include resource diversity (e.g., type and term) flexibility for resource planning and acquisition, and maintaining a competitive market.

<sup>3</sup> The Commission may consider requirements imposed by other states for the RFP process. See Order No. 06-446 at 9.

<sup>4</sup> Idaho Power may be relieved of the obligation to comply with certain of the competitive bidding guidelines to the extent that such guidelines are not required for competitive bids by the Idaho Public Utilities Commission.

~~and the PPA must respond to a resource need that could be met through a PPA or a be-in-lieu-of-a-utility ownership option.<sup>5</sup>~~

- **Joint Utilities' Comment:** This revision reflects the Joint Utilities' position that this straw proposal should require PPA acquisition through a competitive solicitation only when the Commission's RFP Guidelines in Order No. 06-446 so dictate. Otherwise, the straw proposal would effectively extend the mandatory RFP Guidelines to all PPAs 25 MW and larger and 3 years or longer and eliminate all exceptions to the applicability of the RFP Guidelines. This is of particular concern for PPAs involving renewable resources, given RPS mandates and the competitiveness of renewable resource acquisition.
  - Additionally, this revision clarifies that a PPA may qualify for an incentive in the absence of a specific ownership alternative, as long as the utility can demonstrate the general availability of an ownership alternative to meet the resource need. This should address the underlying policy concern and avoid disputes over whether a PPA was acquired in lieu of a specific ownership option.
- 3) The PPA counter-party must absorb certain risks during project development (if the PPA is for a facility not yet completed), as well as explicit performance and operational risks.<sup>6</sup> The utility may comply with this requirement by demonstrating that Financial Accounting Standards Board (FASB) Financial Interpretation 46(R): Consolidation of Variable Interest Entities (FIN 46(R)) does not require consolidation of the PPA on the utility's balance sheet.
- **Joint Utilities' Comment:** This revision is designed to incorporate the objective and auditable standards of FIN 46(R) to verify that the risks underlying a PPA are generally being borne by the PPA counter-party (as seller) and not the utility (as buyer). This concept was described in greater detail in the summary of FIN 46(R) that PacifiCorp circulated to the parties on November 19. The application of this standard eliminates the difficult challenge of drafting new risk transfer guidelines and standards. It also eliminates the need for and cost of a PPA eligibility determination by an RFP independent evaluator.
- 4) Only contracts 25 MW or greater with a delivery term of three years or longer are eligible.<sup>7</sup>
- **Joint Utilities' Comment:** Footnote 7 was deleted, consistent with the Joint Utilities' Comment under Point (2) above.

<sup>5</sup> The utility would not receive an incentive on turnkey projects. Staff is reviewing whether self-build option should be required in order to compare relative costs and benefits of PPAs.

<sup>6</sup> See NIPPC's version of the CIM/pp proposal filed September 13, 2007, at 2.

<sup>7</sup> ~~The Commission's competitive bidding guidelines do not preclude the utilities from specifying contract sizes and terms less than 100 MW and five years.~~

- 5) Only PPAs contractually associated with specific assets by unit when in operation are eligible. Contracts may allow for economic displacement and include replacement power provisions.
- 6) Contracts that utilities must enter into by law, including mandatory contracts under the Public Utility Regulatory Policies Act with Qualifying Facilities (QFs), are *not* eligible. However, FERC qualification of the counter-party as an exempt wholesale generator or a QF does not make the PPA ineligible for the proposed incentive.

#### Other Elements of the Proposal:

- 1) The utility will not consider the incentive in determining the RFP initial or final short-lists. ~~To allow for consideration of risk mitigation benefits of PPAs, at a minimum the utility will include in the final short-list evaluation all PPAs whose price does not exceed 110 percent of the forward price curve and which otherwise qualify.<sup>8 9</sup>~~ The Commission will consider the incentive in any acknowledgment proceeding for the final RFP short-list.
  - **Joint Utilities' Comment:** As noted above, the Joint Utilities do not agree that the basic RFP Guidelines adopted in Order No. 06-446 should be indirectly revised by incentive mechanisms adopted in this docket. For this reason, the Joint Utilities oppose the proposed provision requiring preferential scoring of PPA bids. This proposal for preferential scoring also goes much further than a related precedent involving renewable resource bids, adopted in Order No. 04-091 in UM 1118.
- 2) ~~The Independent Evaluator will provide a formal recommendation on the eligibility of the PPA for the incentive based on an evaluation of costs and benefits compared to utility ownership options. Regarding the extent to which the PPA absorbs asset ownership risks, the utility may demonstrate that Financial Accounting Standards Board Financial Interpretation 46(R), *Consolidation of Variable Interest Entities*, does not require consolidation of the PPA on the utility's balance sheet.~~
  - **Joint Utilities' Comment:** The Joint Utilities object to this provision for the reasons discussed in reference to Points 2 and 3 above.
- 3) Any utility engaged in one or more PPAs under the incentive must report annually on its financial metrics and provide documentation demonstrating discernible effects on any imputed debt calculations and credit ratings.

<sup>8</sup> A utility already may include bids above this threshold in its final short-list evaluation to ensure a sufficient number of bids, resource amounts, and resource diversity. The utility also should consider how its Benchmark Resources compare to the forward price curve.

<sup>9</sup> Staff's proposed incentive should not be combined with NIPPC's proposed mechanism to discount PPAs in the competitive bidding process.

4) ~~The total incentive payments for any year under this mechanism will be limited to 1 percent of the utility's authorized retail revenues for the previous calendar year. After total incentive payments reach this level, the Commission will review the incentive mechanism for potential extension and modifications. The mechanism will continue up to the 1 percent cap while the Commission completes the review. At a minimum, the Commission will review the incentive within three years of the date the incentive is first included in the utility's rates.~~

- **Joint Utilities' Comment:** The Joint Utilities believe that the limits on the PPAs that are eligible for incentive treatment provide adequate protection for customers. Therefore, the Joint Utilities believe the proposed cap is unnecessary.

5) The utility may seek recovery of the incentive through a rate case or annual net variable power cost update. Unless otherwise allowed by law or Commission order, PPAs are subject to a prudence review before PPA expenditures and incentives can be reflected in rates.