June 7, 2006

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
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Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities
OPUC Docket No. UM 1129

Attention Filing Center:

Enclosed for filing in the above-captioned docket is Portland General Electric's Phase II Opening Brief. This document is being filed by electronic mail with the Filing Center.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

/s/ J. RICHARD GEORGE

JRG:am
Enclosure

cc: UM 1129 Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1129

In the Matter of	)	
	)	
PUBLIC UTILITY COMMISSION OF OREGON	)	**PHASE II OPENING BRIEF OF PORTLAND GENERAL ELECTRIC COMPANY**
	)	
Staff's Investigation Relating to Electric Utility Purchases From Qualifying Facilities	)	

Portland General Electric Company ("PGE" or the "Company") hereby submits its Phase II Opening Brief in this proceeding.

I. Introduction

Phase II of this docket focuses primarily on the contracting and negotiating parameters for nonstandard Qualifying Facility ("QF") contracts. The importance of the Commission's policies and potential rules governing required power purchases under the Public Utility Regulatory Policies Act of 1978 ("PURPA") ultimately is an issue of the commitments made by, and utilities' reliance upon, large QFs as a part of the supply portfolio for utility customers.

The various issues and details addressed in this Phase II distill down to the degree to which QFs contribute an economic source of generation to the utility's supply portfolio over time. The Public Utility Commission of Oregon ("OPUC" or "Commission") must adopt policies that clearly require QFs and utilities to engage in a thorough assessment of a project's supply commitments in order to develop an appropriate price structure based on avoided costs for the specific QF.

Because the Commission will be making important policy decisions, it is important to outline the legal requirements that provide the foundation for these decisions. As PGE has stated

in prior briefing, PURPA was enacted in 1978 to "combat the nationwide energy crisis"[1] and reduce U.S. reliance on foreign energy supplies. To promote these objectives, PURPA aimed to develop cogeneration and small power production facilities as alternative energy sources to large traditional fossil fuel facilities.[2] As the Federal Energy Regulatory Commission ("FERC") explains, "[w]ith PURPA, Congress was seeking to diversify the Nation's generation fuel mix and promote more efficient use of fossil fuels when they were used for generation by encouraging renewable technologies and cogeneration, in order to cushion against further price shock and reduce dependence on fossil fuels. In promoting greater fuel diversity, however, Congress was not asking utilities and utility ratepayers to pay more than they otherwise would have paid for power."[3]

The intent of PURPA is to encourage QF development. That purpose is largely carried out by providing QFs with a mandated or obligated buyer for their power. However, that purpose legally must be carried out in the context of avoided costs. 18 C.F.R. §§292.303-.304 (2004). These regulations define "avoided costs" as: "[t]he incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate or purchase from another source." 18 C.F.R. § 292.101(6). FERC has ruled that requiring payments to QFs that are higher than avoided cost to support a policy goal is illegal. *See* 18 CFR 292.204(a)(2); *In the matters of Southern California Edison Company and San Diego Gas & Electric Company*, Docket Nos. EL95-16-001, 71 FERC 61,269, 1995 WL 327268 (F.E.R.C.) at 9.

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1 *Fed. Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 745 (1982).
2 *FERC v. Mississippi*, 456 U.S. at 750.
3 *In the matters of Southern California Edison Company and San Diego Gas & Electric Company*, Docket Nos. EL95-16-001, EL95-19-001, 71 FERC P 61,269, 1995 WL 327268 (F.E.R.C.).

In this context, with respect to nonstandard contracts, we believe that there are policies that must be universally accepted by the parties:

1. Nonstandard QF contracts should be nondiscriminatory and commercially reasonable with standard business practice terms and conditions consistent with the utility resource plans and with industry standards for power purchases.

2. The QF industry and QF power sales should be promoted within the context of PURPA; as QF purchases are mandatory, utilities and their customers should not be harmed by such purchases.

In order to promote these policies, we ask this Commission to preserve the greatest possible flexibility for parties negotiating nonstandard QF contracts for facilities greater than 10 MW.

II. Development of Negotiation Parameters and Guidelines For Nonstandard QF Contracts (Issue 1).

PURPA regulations allow avoided cost purchase rates to be standardized or individually negotiated. *See* 18 C.F.R. 292.304. This phase of the docket concerns QFs that this Commission has decided should receive such individually negotiated or "nonstandard" contracts. OPUC Order No. 05-584, May 13, 2005, at 17. For nonstandard contracts, PURPA rules provide that characteristics of QF facilities, such as a facility's dispatchability, should be taken into account to the extent practicable. 18 C.F. R. 292.304(c)(3)(i), 292.304(e)(2) (providing the list of "FERC adjustment factors").[4]

The specific framework for the nonstandard QF contract includes issues relating to risks, commitments, and adjustments for supply considerations as laid out in the FERC adjustment factors. The consistent application of these factors is the key to supporting economic,

[4] Likewise, and although inapplicable to PGE and Pacificorp under OAR 860-029-0001, the Commission rules for state PURPA emphasize this concept. OAR 860-29-005(3)(d) explains that actual avoided costs "will depend on the quality and quantity of power to be delivered to a utility" and "may be recalculated to reflect stream flows, generating unit availability, loads, seasons, and other conditions."

nonstandard QF contracts. The challenge for the Commission is to assure both utility customers and potential QFs that the factors are relevant and are applied in a consistent manner that benefits both the QF and the utility customers.

This docket reinforces the concept that QFs have unique power supply characteristics. In particular, when comparing different technologies, QFs are likely to be substantially different from each other. The value of utilizing the FERC-mandated adjustment factors for setting avoided cost prices is that the unique differences in the supply characteristics and the QF's commitments to deliver power (including term, creditworthiness, etc.) are recognized and must be accommodated by the purchasing utility. However, a utility should not be required to pay the same price for power supplied under differing conditions resulting from a QF's particular characteristics. PGE strongly supports nonstandard QF contract development that considers the specific QF requirements against the backdrop of the utility's potential avoided resources. Since QFs have the potential to produce a diverse range of power supply products, QF contracts should incorporate the flexibility to account for this diversity.

Several parties, however, are seeking to define exactly how each of the listed factors for consideration should be systematically applied to "negotiated" nonstandard contracts. For example, Weyerhaeuser-ICNU suggests that this Commission should adopt guidelines that will be a "complete and comprehensive set of terms as the basis of negotiations." Weyerhaeuser-ICNU/300 Beach/11. *See also* Staff/1800 Schwartz/8-16.[5]

[5] Staff also suggests that the Edison Electric Institute ("EEI") Master Agreement can be a standard for nonstandard contracts. Staff/1800 Schwartz 8. As PGE discussed in its testimony, we would support using such contracts as a starting point, but modifying the terms as necessary to reflect each individual QF's characteristics. See PGE/500, Kuns-Sims/3 ("We agree that the EEI Master Agreement may be helpful as a guide, but when the QF is proposing to deliver power with commitments different than the standard wholesale power products offered under an EEI Master Agreement (such as a fixed quantity of power delivered over a set period of time with standard credit requirements and damages provisions), the pricing and contractual template will need to be adjusted to reflect the specific QF project characteristics.").

Strictly defining parameters and guidelines for nonstandard contracts (beyond those parameters and guidelines as set forth in the FERC rules) in effect makes these contracts standardized, and not negotiated. The purpose behind standardization is to assist small unsophisticated QFs with perceived barriers to negotiation (transaction costs, bargaining disparity, knowledge of power marketing, etc.). *See* Order 05-584 at 16.[6] The rationale is that by offering standard contracts and pricing, a small QF will be able to avoid transaction costs and other perceived barriers to negotiating a power purchase agreement, and will also obtain enough up-front certainty (especially from a fixed pricing option) to be able to finance its small and potentially risky project.

The tradeoff, however, with standardizing these QF contracts is that there is a significant risk that over time a QF will be paid higher than a utility's avoided cost—to the detriment of PGE and its customers. This Commission spent a great deal of time weighing these competing interests in determining what size of QF faced such potential barriers and needed the extra help potentially provided by a standardized contract. *See* Order 05-584 at 12-17. In Phase I of this docket, the Commission determined that 10 MW was the appropriate threshold. Presumably, the Commission considered that with up to 10 MW QFs, the risk of overpayment was either minimal or outweighed by the policy considerations concerning removal of perceived barriers to QFs.

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[6] Specifically, that order states "We continue to adhere to the policy, as articulated in Order No. 91-1605, that standard contract rates, terms and conditions are intended to be used as a means to remove transaction costs associated with QF contract negotiation, when such costs act as a market barrier to QF development. Standard contracts are designed to eliminate negotiations and to thereby remove transaction costs. In implementing PURPA, FERC recognized that some QF projects would be too small and have projected revenues too minimal to justify investing the upfront costs necessary to engage an attorney on an hourly basis to negotiate a QF power purchase contract. Classifying these costs as 'transaction costs,' FERC determined that it was appropriate to eliminate transaction costs for a defined class of very small QFs. Consequently, FERC mandated that QF projects sized at 100 kW or smaller would be eligible for standard contracts. FERC discerned, however, that experience might demonstrate that this threshold was insufficient and delegated authority to state commissions to increase it. As individual states have gained greater familiarity with QF projects, many states have increased the minimal threshold. This Commission has done so in the past and is asked to do so again in this proceeding."

However, due to the risk of overpayment imposed on utilities and their customers, large QFs (greater than 10 MW plants) should not receive standardized contracts.[7] In addition, plants over 10 MW do not face the same perceived barriers as smaller facilities. These larger QFs will cost millions of dollars to construct. With such substantial dollars at risk, these project developers must have a sophisticated understanding of electrical generation facilities and of their economics in order to participate in such ventures.[8] Except for their ability to mandate power purchases at avoided cost by a utility, these large QFs should be treated consistently with industry standards and required to negotiate like any other independent power producer trying to market or sell power. Transaction costs of negotiating a nonstandard power purchase agreement are likely a very small fraction of the total project cost and not a barrier to these QFs securing a power purchase agreement with the incumbent utility.

Moreover, removing flexibility for nonstandard contracts is bad for *both* the QF and the purchasing utility. As discussed above, flexibility allows the QF and utility to agree upon pricing and terms in an agreement that reflects the particular QF's supply characteristics and commitment to deliver. Such flexibility also allows the QF to choose how to operate their facility in a manner that best suits their needs. For example, a QF may wish to agree to make a lesser commitment to coordinate outages, or to make its facility unavailable in the event of an

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7 PGE previously testified: "For example, if small QF projects with combined output of 10 MWa per year (87.6 million kWh) were to receive a 1 cent/kWh premium above the appropriate adjusted avoided cost rate, the power purchase cost impact is an additional $876,000 per year in power costs to customers." PGE/100, Drennan-Kuns/13.

8 In Phase I of this docket, PGE testified: "Q. What is the installed cost of a project that would meet your standard contract size proposal? A. At $1,000 per kW installed capital cost, 2 MW projects may have costs of about $2 million. Projects at the MW thresholds we propose [5 MW wind; 2 MW all other projects] could potentially be generating revenues approaching $1 million per year. Any project larger than $2 million installed cost and taking nearly $1 million per year should have the power purchase price considered with the unique operating characteristics of the plant. Any developer spending more than $2 million for a project should expect to negotiate the proper avoided cost to pay for the project to assure the utility customers are held harmless." PGE/100, Drennan-Kuns/14.

emergency (if legally possible), in exchange for a lower adjusted avoided cost payment. If the negotiation parameters are inflexible, then the contract potentially cannot accommodate the QF's wishes.

No party has shown in this proceeding that standardizing nonstandard negotiation parameters and contract terms for large QFs is necessary. Other than general unsupported assertions, such as Weyerhaeuser-ICNU's claim that strictly defined negotiation parameters are required to overcome "artificial barriers" to QF development or to avoid contract disputes (Weyerhaeuser-ICNU/304, Beach/3-4), there is absolutely no evidence in the record that supports the need for such standardization. There is no evidence in the record that large QFs have been unable to negotiate contracts. There is no evidence that large QF projects have been undeveloped as a result of the current nonstandard contracting process based on the FERC adjustment factors. Removing flexibility from the negotiation process is not necessary to protect QFs from any greater apparent leverage a utility might have when engaging in negotiations. Again, large QFs are themselves typically sophisticated developers of multi-million dollar projects. For example, Weyerhaeuser, a participant representing QF interests in this docket, is a Fortune 500 company.[9] Additionally, these QFs have greater protections than regular independent power producers under PURPA, including the right to influence PURPA policy through participation in state efforts to implement federal PURPA (such as this docket). There is also Staff and Commission involvement in the event that the parties are at an impasse, as a QF has the option to file a complaint pursuant to ORS 756.500. Additionally, PGE recommends that each nonstandard QF contract be filed and contingent on Commission approval, in order to

[9] See http://money.cnn.com/magazines/fortune/fortune500/full_list/

ensure that such contracts are nondiscriminatory and commercially reasonable. PGE/400 Kuns-Sims/12.

The choice that the Commission is faced with is simple: support the development of economic and efficient large QFs with the current process under federal law, allowing both the QF and utility to structure appropriate agreements; or, require changes to effectively standardize nonstandard contracts and pricing, thereby increasing the risk of economic harm to utility customers and potentially to the QF without credible evidence that such changes are required.

III. Discussion of Specific Phase II Issues

As required by the Administrative Law Judge ("ALJ") in her May 4, 2006 Ruling, PGE will sequentially address each Phase II issue adopted in this proceeding.

Issue 1.a: Qualifying Facilities larger than 10 MW should be entitled to a contract of no more than 20 years in length.

Despite our reservations about fixing negotiation parameters for negotiated QF contracts, PGE is willing to agree to a duration limit for these contracts. Specifically, PGE has stipulated with other parties that nonstandard contracts should be limited to 20 years in length in order to balance risks imposed on the utility with a term that may be needed by a QF in order to secure financing.

Issue 1.b: QF power supply commitments should differentiate between "as available" and "legally enforceable obligations" for delivery of energy and capacity

As PGE stated in its testimony, a "legally enforceable obligation" is a QF supply that is provided under "specific contractually enforceable terms" and "is 'firm' and known in advance of delivery and there is recourse if delivery does not occur as committed." PGE/400 Kuns-Sims/12. Although there may be variations in how firm a particular commitment is, a QF that agrees to a legally enforceable obligation generally should receive both energy and capacity

payments, as there is assurance from a capacity standpoint that the energy will be available. A QF that supplies energy on an "as available" basis should receive energy-only payments largely based on market pricing at the time of delivery, as there is no commitment to deliver any amount of energy at any given time.

Issue 1.c: "Firm" and "non-firm" supply commitments should be defined in accordance with federal law and differentiated through contract default and damages provisions.

Staff provides the definitions of the terms "firm energy" and "non-firm energy" from OAR 860-029-0010 (13) and (16) respectively. PGE notes that the rule is inapplicable to this matter. *See* OAR 860-029-0001. Essentially, the terms "firm" and "non-firm" are the same as "legally enforceable" and "as available," and the same rationales with respect to pricing should apply to those QF supply arrangements characterized under those terms. With respect to default and damages provisions for firm commitments, it is PGE's position that such provisions should be included in nonstandard agreements incorporating a legally enforceable obligation, and that there should be no caps or limitations on default or damages. If there are default or damage caps, significant risks are shifted to utility customers or ratepayers, a fact which is recognized by Staff. *See* Phase II Hearing Transcript at 111-112 (Feb 2, 2006 Schwartz Cross).[10] In order to protect the utility and its customers and ensure QF compliance with its promises, actual damages should be available to the utility in the event of a default. This is consistent with Staff's view. *See* Staff/1800 Schwartz/6.

[10] Ms. Schwartz testified as follows: "Q. And again it's the same question I asked Mr. Keto, and I know you were in the room when he was here, what that means is that by imposing the cap you're shifting some of the risk and cost of the QF default away from the QFs and on to customers; isn't that correct? A That's correct. And I want to clarify my previous statement in that the risk is certainly absorbed by the utilities. Whether it is passed onto customers depends on a number of factors. In other words, whether there's a power cost adjustment in place at the time, or some other kind of mechanism like that. Q. And in the situation where you don't have a power cost adjustment, it's possible that the utility's shareholders will simply absorb that cost. A. That is possible."

With respect to default and damages provisions for non-firm commitments, PGE's position is that no such provisions are required to enforce any specific commitment to deliver a quantified amount of energy. However, there are other potential defaults by a QF supplying "as available" energy that may result in harm to a utility and its customers. For example, a utility should be able to find a QF in default, terminate the contract, and obtain damages (if any) in the event that a QF has lost its status as a QF but has not informed the utility and has continued to require the utility to purchase its power.

Issue 1.d: Avoided Costs should be adjusted through consideration of the specific FERC adjustment factors as a package on a case by case basis for each unique QF.

Some parties have sought explanation by PGE of how each FERC adjustment factor may be formally applied to QFs. *See, e.g.,* ICNU Data Request 7.4. Staff also has provided formulaic (*i.e.* standardized) rules for applying these factors. *See* Staff/1800 Schwartz/9-15.[11] PGE however, has declined to provide specific bright-line rules for applying each FERC adjustment factor. PGE has not deliberately attempted to be vague, as Weyerhaeuser-ICNU suggests; rather, we view each QF contract as a collection of terms and conditions that must be evaluated as a whole package. For example, we do not believe that there is an absolute measurement of how much the avoided cost of a particular QF should be adjusted if a QF is more or less dispatchable. And again, a QF may wish to negotiate terms that fit its individual operational preferences, rather than having the FERC adjustment factors strictly applied.

[11] Despite making such statements as "the contract should require the Seller to meet its delivery obligations to the utility during system emergencies," or "Many QFs are located at or near customers sites. In these cases, the utility should reflect in negotiated cost rates the reduction in transmission costs and line losses . . ." (Staff/1800 Schwartz/13-15). Staff also stated with respect to the adjustment factors: "my comments are not intended to limit the terms and conditions the utilities and QFs can negotiate for PURPA contracts." *Id*. at 13. PGE is not sure how to reconcile these apparent inconsistent statements.

As discussed above, PGE strongly believes that great flexibility should be allowed in applying the FERC adjustment factors in the negotiation process for large QF contracts. Our methodology for establishing an avoided cost-based price for a particular QF will depend on the characteristics of the project that are related to the particular factors. Obviously, the supply commitments made by a specific QF are the primary consideration when determining the value of delivered energy and/or capacity. However, all the FERC adjustment factors must be evaluated to achieve a complete deal that is nondiscriminatory, commercially reasonable, and ultimately not harmful to utility customers.

Issue 1.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 with PacifiCorp and the Qualifying Facility reasonable?

PGE has no position on this issue.

Issue 1.f: PGE does not adjust avoided cost calculations for Qualifying Facilities over 10 MW based on factors that have not been approved by the Oregon Public Utility Commission.

In our response to Weyerhaeuser—ICNU Data Request 7.2, we stated: "PGE considers the FERC adjustment factors to be sufficient to appropriately adjust the avoided costs for nonstandard QFs, and has not utilized other factors." We believe that the FERC list is comprehensive, and when all factors are considered on a case by case basis for each unique QF, an appropriate avoided cost price is achieved.

Issue 2: The appropriate amount of default security to be required for nonstandard contracts in the event of the inability of a QF to establish creditworthiness should not be capped for large QFs and be determined on a case by case basis.

It is PGE's position that there should be no arbitrary limitations on creditworthiness assurances, and that such assurances should be set at commercially reasonable levels commensurate with the credit risk posed by the particular QF. As discussed in our testimony,

such risk will be "defined by such factors as [a facility's] size and the type of supply commitments the QF is making." PGE/400 Kuns-Sims/19. The larger the QF facility, the greater potential impact caused by default on a utility's resource planning and customer rates. Idaho Power/300, Gale/8-9. Therefore, appropriate and commercially reasonable amounts of default security should be available to cover the risk in the event that a large QF is unable to meet commercially reasonable creditworthiness criteria.

Issue 3.a: How should firm vs. non-firm commitments and integration of intermittent resources affect the calculation of avoided costs?

PGE notes that integration costs for intermittent resources is an emerging issue that likely will be addressed in our next Integrated Resource Planning process. We believe such costs can be addressed through flexible application of the FERC adjustment factors, which is consistent with Staff's perspective that such factors provide the basis for consideration of integration costs. *See* Staff/1800 Schwartz/22. For large QF projects where integration costs to a utility may be significant, we must consider impacts over the life of the QF contract. To do otherwise will disconnect pricing from avoided costs and from utility resource planning.

To undertake prudent and realistic resource planning, we cannot ignore the impact of both current and future integration costs of intermittent sources such as wind. Staff's proposal to set system integration costs based on integrating resources into the existing system, with a five year limit on cost escalation, simply does not align with prudent future planning for integrating additional such resources. The impact of these particular large QFs on system costs should be considered in the avoided cost pricing determination.

Issue 3.b: Appropriate cost and contract provisions necessary to address purchases from QF projects that are located outside of PGE's control area are generally found in PGE's Out of Service Area Contract.

Except as otherwise negotiated on a case-by-case basis in the context of the FERC adjustment factors, the appropriate cost and contract provisions for large nonstandard contract QFs may be found in PGE's Out of Service Area Contract, filed as Exhibit 402 in this docket. Although this agreement is a Standard Contract and only applies to QFs under 10 MW, it incorporates the necessary terms to accommodate out of control area QFs, including terms regarding scheduling, transmission and metering arrangements. The intent of this agreement is that purchases from projects outside PGE's control area will receive essentially the same terms as directly interconnected QFs. Of course, because each large QF has unique characteristics, the FERC adjustment factors will need to be applied in negotiating a nonstandard Out of Service Area Contract with each particular QF.

Issue 4: A Mechanical Availability Guarantee may be useful in some circumstances, but should not necessarily be substituted for an actual supply commitment.

A Mechanical Availability Guarantee ("MAG") may be useful in providing more certainty to a utility and its customers that a particular facility will have the capability to generate. This may be especially true with respect to a QF that has very erratic production patterns. *See* PGE/400 Kuns-Sims/19. However, by itself, a MAG does not guarantee delivery (despite inherent incentives for a QF to generate that exist with or without a MAG), and therefore a QF with only a MAG should not receive the same firm avoided cost pricing as a QF that negotiates a minimum supply commitment. If a QF wishes to have a MAG rather than a specific minimum supply requirement, then the avoided cost pricing paid to the particular QF should be adjusted using the FERC adjustment factors.

Issue 5.a: Should Pacificorp offer a market pricing option?

PGE has no position on this issue.

Issue 5.b Definition of "Nameplate Capacity" as basis for defining eligibility for standard contracts and avoided costs rates.

PGE has stipulated to the following definition of nameplate capacity:

> The full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

Issue 6: There should be no cap on default losses that can be recouped, pursuant to future QF contract payment reductions.

Mandated damage caps do not allow a utility to recover actual damages caused by a particular default. Such caps expose utilities and customers to risks due to QF non-performance, and these risks are magnified as the size of the QF increases. PGE/400 Kuns-Sims/20; *See also* Phase II Tr. 111-112. QF developers, not utilities and customers (who have no choice but to purchase the power) should bear the risk of non-performance.

Issue 7: Commercially reasonable amounts of liability insurance should be acquired by all QFs.

PGE believes that liability insurance is appropriate no matter the size of the QF. There is no credible evidence in the record that liability insurance for QFs less than 200 kW is either costly or difficult to obtain. In fact, testimony by Idaho Power indicates that all QFs in its jurisdiction, no matter their size, have been able to obtain commercially reasonable amounts of

liability insurance. Idaho Power/300, Gale/10[12]. PGE also is unaware of any QFs in its service territory that have been unable to obtain liability insurance.

Issues 8-9: "simultaneous sale and purchases" and "net output sales"

PGE has stipulated to the following in resolution of these issues:

> "surplus sale" is defined as the QF's sale to the purchasing utility of the net output of the QF generation minus the QF host's on-site electricity requirements. "Simultaneous purchase and sale" means the QF's sale to the purchasing utility of the net output of the QF generation and the purchase of the QF host's on-site electricity requirements from the purchasing utility under that utility's applicable retail sales tariff. (*see* Order No. 05-584, p. 53). Under a "simultaneous purchase and sale" the QF and the purchasing utility enter into two separate transactions. Nothing in this settlement agreement limits the ability of a QF to sell any electricity at wholesale to third parties.
>
> (1) QFs may either contract with the purchasing utility for a "surplus sale" or for a "simultaneous purchase and sale;" provided, however, that the QF's selection of either such contractual arrangement shall not be inconsistent with any retail tariff provision of the purchasing utility then in effect or any agreement between the QF and the purchasing utility;
>
> (2) The two sale/purchase arrangements described in paragraph (1) will be available to QFs regardless of whether they qualify for standard contracts and rates or nonstandard contracts and rates, however the "simultaneous purchase and sale" is not available to QFs not directly connected to the purchasing utility's electrical system;
>
> (3) The negotiation parameters and guidelines should be the same for both sale/purchase arrangements described in paragraph (1); and
>
> (4) The avoided cost calculations by the utilities do not require adjustment solely as a result of the selection of one of the

[12] Specifically, the testimony states: "First, it should be stated that the size of a QF facility has nothing to do with the exposure that a utility has in the case of an electrical contact or other incident in which liability insurance would come into play. The need for liability insurance is just as serious for a 200 kW facility as it is for a 20 MW facility. That being said, Idaho Power currently has contracts with 11 QFs whose design capacity is 200 kW or less. Each one of those QFs maintains $1,000,000 of liability insurance. There is no indication that these small QFs are having any difficulty obtaining and paying for liability insurance."

sale/purchase arrangements described in paragraph (1), rather than the other.

Issue 10: Staff should have a role in informal resolution of QF contract disputes, the Commission should resolve negotiation disputes through its complaint process, and all nonstandard QF contracts should be filed with the Commission for approval.

An informal Staff role in dispute resolution is appropriate and may help resolve many disputes before they become formal. Staff has shown in this docket that it is attempting to balance promotion of QF interests with the potential for harm to a utility and its customers, and that it has institutional knowledge regarding PURPA that will help it to provide useful guidance in the nonstandard contract negotiation process. If negotiation disputes cannot be resolved informally, then QFs may file formal complaints under ORS 756.500.

PGE supports the concept that all nonstandard QF agreements should be filed for approval with the Commission. By doing so, the Commission can make its own analysis and confirm that any agreement is nondiscriminatory, commercially reasonable and based on appropriate avoided costs that result in no utility and customer harm. These are potentially long-term contracts for a large supply that can lead to large impacts on customers.

Issue 11: Competitive bidding may be used to set pricing for Qualifying Facilities if the utility has recently completed an RFP, or a bidding process is in progress or imminent.

PGE's position on this issue is that an RFP process may be useful in determining and calibrating an appropriate price, but should not necessarily be used in all circumstances because already available avoided cost information may be a reasonable proxy. *See* PGE/400 Kuns-Sims 14-15. We have not proposed a specific methodology about how to apply market information acquired through an RFP process, but certainly timely information about resource costs should inform the development of avoided cost prices. Further, PGE's view is consistent with Staff's

position that prudency requires that the larger the QF, the more imperative that the utility consider any appropriate RFP information. *See* Staff/1800, Schwartz/41.

Issue 12: Under the Energy Policy Act of 2005 should an Oregon electric company be required to enter into a new contract with a QF that is located in the service territory that is exempt from the mandatory purchase obligation under PURPA?

PGE believes that this issue is a matter concerning federal jurisdiction and is unresolved at this time. However, a plain reading of the new statutory language in the 2005 Energy Policy Act suggests that PGE would not be required to purchase from out of service territory QFs to which the exemption applies.

The new language, in PURPA Section 210 (m)(1), states:

> OBLIGATION TO PURCHASE—After the date of enactment of this subsection, *no electric utility* [emphasis added] shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to . . . .[one of three separate wholesale markets].

This language clearly establishes that the Commission must look at the *specific* QF to determine whether it has sufficient access to other wholesale markets and should not be able to exercise the mandatory purchase and sale authority of PURPA. If a QF meets that test, then "no electric utility," including one outside the service territory where the QF resides, is required to purchase the QF's generation.

Issue 13: The effect on avoided costs of debt imputation issues resulting from new accounting rules (or rating agency procedures) should be considered.

At current QF activity levels, this is likely a minor issue for PGE. However, the potential cumulative and long-term effects of debt imputation may be significant, and the Commission as

well as QFs and utilities should be aware of the potential impact and consider debt imputation as an ongoing issue with respect to avoided costs.

Issue 14 Standard Form Off System QF Contracts.

PGE believes that this issue is effectively settled. PGE has included its standard Out of Service Area Contract as Exhibit 402 to its testimony.

IV. Conclusion

This UM 1129 docket has examined QF power purchase policy issues at length. Throughout this docket, PGE's position has not wavered from the principle that economic QF development must be supported in the context of appropriate avoided costs. Avoided costs are the basis under which utilities must develop and negotiate the pricing and related terms and conditions for nonstandard contracts for large QFs. Nonstandard contracts and pricing should reflect all the unique characteristics of the QF in order to achieve an economic QF power supply agreement.

If the avoided cost principle (a requirement of federal law) is not adhered to, utilities and their customers face the risk of significant financial injury. In this Phase II of the docket, concerning facilities larger than 10 MW, the stakes are only raised, as a careful and thorough assessment of the value and costs (such as integration costs) of a QF is critical to minimize the risk of harm from larger utility purchase obligations. Key to reaching an appropriate avoided cost for these large QFs is the flexibility under the FERC avoided cost adjustment factors in capturing the characteristics and supply commitments of each unique QF. We believe, given the evidence in the record, that the Commission can, and should, conclude that the utilities and large QFs are able to negotiate and develop on a case by case basis nonstandard power purchase agreements that reasonably reflect avoided costs. QFs will benefit from flexible nonstandard

contract negotiation parameters that allow adaptation to a QF's requirements; utility customers will benefit from the supply of appropriately priced economic power.

DATED this 7th day of June, 2006.

Respectfully submitted,

/s/ J. RICHARD GEORGE

J. RICHARD GEORGE, OSB No. 97469
Portland General Electric Company
121 SW Salmon Street, 1WTC1300
Portland, OR 97204
Telephone: 503-464-7611
Fax: 503-464-2200
E-Mail: richard.george@pgn.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing PHASE II OPENING BRIEF OF PORTLAND GENERAL ELECTRIC COMPANY to be served by electronic mail, and for those parties who have not waived paper service, by First Class US Mail, postage prepaid and properly addressed, upon each party on the attached service list, pursuant to Oregon Administrative Rule 860-013-0070.

Dated at Portland, Oregon, this 7th day of June, 2006.

/s/ J. RICHARD GEORGE
J. Richard George

BRUCE CRAIG
ASCENTERGY CORP
440 BENMAR DR STE 2230
HOUSTON TX 77060
bcraig@asc-co.com

LISA F RACKNER
lfr@aterwynne.com

DON READING
BEN JOHNSON ASSOCIATES
6070 HILL ROAD
BOISE ID 83703
dreading@mindspring.com

THOMAS M GRIM
ATTORNEY
CABLE HUSTON BENEDICT ET AL
1001 SW FIFTH AVE STE 2000
PORTLAND OR 97204-1136
tgrim@chbh.com

STEVEN C JOHNSON
DISTRICT MANAGER
CENTRAL OREGON IRRIGATION DISTRICT
2598 NORTH HIGHWAY 97
REDMOND OR 97756
stevej@coid.org

LOWREY R BROWN
CITIZENS' UTILITY BOARD OF OREGON
610 SW BROADWAY - STE 308
PORTLAND OR 97205
lowrey@oregoncub.org

JASON EISDORFER
CITIZENS' UTILITY BOARD OF OREGON
610 SW BROADWAY STE 308
PORTLAND OR 97205
jason@oregoncub.org

CHRIS CROWLEY
COLUMBIA ENERGY PARTNERS
100 E 19TH STE 400
VANCOUVER WA 98663
ccrowley@columbiaep.com

R THOMAS BEACH
CROSSBORDER ENERGY
2560 NINTH ST - STE 316
BERKELEY CA 94710
tomb@crossborderenergy.com

RANDY CROCKET
CHIEF FINANCIAL OFFICER
D R JOHNSON LUMBER COMPANY
PO BOX 66
RIDDLE OR 97469
randyc@drjlumber.com

IRION SANGER
DAVISON VAN CLEVE
333 SW TAYLOR - STE 400
PORTLAND OR 97204
ias@dvclaw.com

S BRADLEY VAN CLEVE
DAVISON VAN CLEVE PC
333 SW TAYLOR - STE 400
PORTLAND OR 97204
mail@dvclaw.com

JANET L PREWITT
ASST AG
DEPARTMENT OF JUSTICE
1162 COURT ST NE
SALEM OR 97301-4096
janet.prewitt@doj.state.or.us

MICHAEL T WEIRICH
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
REGULATED UTILITY & BUSINESS SECTION
1162 COURT ST NE
SALEM OR 97301-4096
michael.weirich@state.or.us

MICK BARANKO
CONTROLLER
DOUGLAS COUNTY FOREST PRODUCTS
PO BOX 848
WINCHESTER OR 97495
mick@dcfp.com

ELIZABETH DICKSON
HURLEY, LYNCH & RE, PC
747 SW MILLVIEW WAY
BEND OR 97702
eadickson@hlr-law.com

RANDY ALLPHIN
rallphin@idahopower.com

KARL BOKENKAMP
kbokenkamp@idahopower.com

JOANNE M BUTLER
jbutler@idahopower.com

JOHN R GALE
rgale@idahopower.com

BARTON L KLINE
bkline@idahopower.com

MONICA B MOEN
mmoen@idahopower.com

MICHAEL YOUNGBLOOD
myoungblood@idahopower.com

DAVID HAWK
J R SIMPLOT COMPANY
PO BOX 27
BOISE ID 83707
david.hawk@simplot.com

LINDA K WILLIAMS
ATTORNEY AT LAW
KAFOURY & MCDOUGAL
10266 SW LANCASTER RD
PORTLAND OR 97219-6305
linda@lindawilliams.net

CRAIG DEHART
MIDDLEFORK IRRIGATION DISTRICT
PO BOX 291
PARKDALE OR 97041
mfidcraig@hoodriverelectric.net

CAREL DE WINKEL
OREGON DEPARTMENT OF ENERGY
625 MARION STREET NE
SALEM OR 97301
carel.dewinkel@state.or.us

LAURA BEANE
laura.beane@pacificorp.com

DATA REQUEST RESPONSE CENTER
datarequest@pacificorp.com

MARK TALLMAN
mark.tallman@pacificorp.com

LISA C SCHWARTZ
SENIOR ANALYST
PUBLIC UTILITY COMMISSION OF OREGON
PO BOX 2148
SALEM OR 97308-2148
lisa.c.schwartz@state.or.us

PETER J RICHARDSON
RICHARDSON & O'LEARY
PO BOX 7218
BOISE ID 83707
peter@richardsonandoleary.com

JOHN M ERIKSSON
jmeriksson@stoel.com

BRIAN COLE
DIRECTOR, GOVERNMENT &
COMMUNITY RELATIONS
SYMBIOTICS, LLC
PO BOX 1088
BAKER CITY OR 97814
bc@orbisgroup.org

THOMAS H NELSON
THOMAS H NELSON & ASSOCIATES
825 NE MULTNOMAH STE 925
PORTLAND OR 97232
nelson@thnelson.com

MARK ALBERT
MARKETING & REGULATORY
AFFAIRS
VULCAN POWER COMPANY
1183 NW WALL ST STE G
BEND OR 97701
malbert@vulcanpower.com

PAUL WOODIN
WESTERN WIND POWER
282 LARGENT LN
GOLDENDALE WA 98620-3519
pwoodin@gorge.net

TOM YARBOROUGH
REG. ENERGY MGR.
WEYERHAEUSER
MAIL STOP: CH 1K32
PO BOX 9777
FEDERAL WAY WA 98063-9777
bruce.wittmann@weyerhaeuser.com

ALAN MEYER
DIRECTOR OF ENERGY
MANAGEMENT
WEYERHAEUSER
698 12TH ST - STE 220
SALEM OR 97301-4010
alan.meyer@weyerhaeuser.com

GLENN IKEMOTO
OREGON WINDFARMS, LLC
672 BLAIR AVENUE
PIEDMONT CA 94611
glenni@pacbell.net

KEVIN T. FOX
ktfox@stoel.com