

JOHN M. ERIKSSON
Direct (801) 578-6937
jmeriksson@stoel.com

March 22, 2006

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

Re: UM 1129

Enclosed for filing in this matter are the original and five copies of PacifiCorp's Post-Hearing Brief on Phase I Compliance Issues.

Very truly yours,

John M. Eriksson

JME:jlf

cc: Service List

1 BEFORE THE PUBLIC UTILITY COMMISSION
2 OF OREGON

3 UM 1129

4 In the Matter of
5 PUBLIC UTILITY COMMISSION OF
6 OREGON
7 Staff's Investigation Relating to Electric
8 Utility Purchases from Qualifying Facilities

**PACIFICORP'S POST-HEARING
BRIEF ON PHASE I COMPLIANCE
ISSUES**

9 PacifiCorp (or the "Company") hereby submits its brief regarding the Phase I
10 Compliance issues which were the subject of the hearing held February 2 and February 8,
11 2006.

12 **INTRODUCTION**

13 Following the issuance of, and in compliance with Order No. 05-584 in this docket,
14 the utilities filed standard form power purchase agreements ("PPAs") and avoided cost rates
15 applicable to qualifying facilities ("QFs") up to 10 MW in size.¹ Issues regarding those
16 filings are now before the Commission for resolution. As was the case earlier in this docket,
17 when the Commission was arriving at its determinations set forth in Order 05-584, the
18 Commission will need to balance the mandates in the Public Utility Regulatory Policies Act
19 ("PURPA") to promote the development of QFs, while at the same time ensuring ratepayer
20 neutrality.
21
22

23 ¹ Advice No. 05-006. PacifiCorp filed two PPAs, one for new projects and one for
24 existing projects. PacifiCorp made a number of corrections and revisions to the PPAs in
25 response to various parties' comments over the course of the proceeding and filed the revised
26 PPAs with its rebuttal testimony. PPL/401, PPL/402. Although the substance of the specific
sections of the PPAs discussed in this brief is the same in each of the PPAs, the section
numbers are in some cases different. References herein to specific PPA section numbers are
with regard to the PPA for new projects (PPL/401).

1 While ratepayer neutrality is probably most easily viewed in terms of quantified
2 avoided costs, there are numerous contract terms that can expose a utility, and its customers,
3 to differing amounts of risk, and such contract terms can affect whether there is ratepayer
4 neutrality. Consistent with the goal of ratepayer neutrality, QF contract terms should
5 generally be consistent with contract terms used in the utility’s similar commercial
6 transactions with non-QF sellers. The Company urges the Commission, in its resolution of
7 the numerous issues before it, to balance the goals of ratepayer neutrality and promotion of
8 QF development so as to not unfairly subsidize or advantage QFs at the expense and risk of
9 utility ratepayers.
10

11 **DISCUSSION**

12 **A. PacifiCorp’s Standard Contract Terms Regarding Creditworthiness,**
13 **Security, Damages and Termination are Reasonable and Comply With**
14 **Order No. 05-584. [Issues 3, 5, 35 and 36.]**

15 **1. PacifiCorp’s security provisions are reasonable. [Issues 5a and**
16 **35.]**

17 **a. PacifiCorp’s Letter of Credit Provisions Regarding**
18 **Environmental Remediation are Appropriate and**
19 **Reasonable. [Issue 5a. iii.]**

20 PacifiCorp’s standard form PPA requires that a QF choosing the step-in rights or
21 senior lien option for default security provide a letter of credit that PacifiCorp could draw
22 upon to satisfy amounts it might incur in order to satisfy environmental remediation
23 requirements. (PPA Section 10.5.) Objections to that requirement based on the perceived
24 “minimal risk to the utility and customers” (Staff/1000, Schwartz/16; ODOE/6, Keto/5) is an
25 inadequate basis for rejection of the proposed PPA provision. While the likelihood of
26 incurring such remediation costs might be considered by Staff and ODOE to be minimal, the

1 magnitude of the risk, if it presents itself, is unknown and cannot be determined without an
2 evaluation of the specific project site. PPL/302, Wessling/2. While ODOE proposes that for
3 a project on an industrial or brownfield site the host company should be given the option to
4 assume the financial responsibility for environmental remediation in lieu of a letter of credit,
5 even assuming the host company were willing to assume such financial responsibility,² there
6 is no basis for assuming that the host company would actually have the financial wherewithal
7 to satisfy the obligations. PPL/302, Wessling/3. Thus, the utility would be saddled with
8 remediation liability. The letter of credit is a reasonable mechanism to avoid placement of
9 that risk on the utility.

11 **b. PacifiCorp’s definition of Default Security is consistent**
12 **with Order No. 05-584 and provides an appropriate**
13 **amount of Default Security in the event of the inability of a**
14 **QF to establish creditworthiness. [Issues 5a. iv, 35.]**

15 PacifiCorp defines Default Security in §1.9 of the PPA as being the positive
16 difference, for 12 average months over the term of the agreement, between 110% of monthly
17 forward power prices and the estimated payments to the QF, provided that the minimum
18 Default Security requirement would equal three average months of estimated payments to the
19 QF. While Staff finds the Company’s Default Security requirement to be reasonable
20 (Staff/1000, Schwartz/20-21), ODOE and Sherman County/Simplot take exception to the
21 provision. Sherman County/Simplot’s opposition is based on the completely erroneous view
22 that Order No. 05-584 “does not provide for default security.” Sherman County/Simplot,
23 Woodin/8. ODOE’s alternative proposal of a cap on default security at 2% of a project’s
24 capital costs bears no relationship to the actual replacement power costs that could be

25 _____
26 ² It is questionable why the host company would have any incentive to assume such liability.

1 incurred should a QF fail to perform, and should be rejected. PPL/302, Wessling/3.

2 PacifiCorp’s definition of Default Security is reasonable and should be approved.

3 **2. PacifiCorp’s Default and Termination Provisions are Reasonable.**
4 **[Issue 5b.]**

5 **a. PacifiCorp’s PPA Reasonably Provides for a “Contracted**
6 **For” Amount of Energy Through its Minimum Annual**
7 **Delivery Requirement.**

8 PacifiCorp’s PPA, Section 4.3, establishes a minimum annual delivery requirement
9 which provides the basis for default. Staff supports the Company’s provision (Staff/1000,
10 Schwartz/27-31) while ODOE proposes an alternative approach for setting the “contracted
11 for” amount of energy based on various percentages of nameplate ratings: 5% for solar, 10%
12 for hydro and wind, and 20% for geothermal, biomass or natural gas-fired cogeneration.
13 ODOE/6, Keto/7. The Commission should reject ODOE’s proposal, as it disregards that the
14 individual QF has the best resources to determine its own minimum delivery obligation based
15 on its consideration of adverse motive force or fuel availability conditions and unplanned
16 maintenance. PPL/400, Griswold/5-6. It is entirely reasonable that the Commission require
17 QFs to make good faith, reasonably based commitments of the minimum amount of energy
18 they will deliver to the utility, and the Commission should approve the Company’s provision.

19 **b. Under-deliveries or Delayed Commercial Operation Date in**
20 **a Period of Resource Sufficiency is An Appropriate Event**
21 **of Default. [Issues 5b. vi and ix.]**

22 Several parties take exception to Section 11.4.1 of PacifiCorp’s PPA to the extent it
23 would require a QF to pay default damages in the event it fails to meet its Scheduled
24 Commercial Operation Date or fails to satisfy minimum delivery obligations during the
25 period of PacifiCorp’s resource sufficiency. However, that opposition is based on the
26 erroneous view that the utility and its customers would necessarily not be harmed as a result

1 of such defaults. In fact, the existence of sufficient resources does not mean that the utility
2 would not be harmed by a seller’s failure to deliver as promised. This is so because there
3 will be an opportunity cost to the utility if the market price at the time of the QF’s default is
4 greater than the contract price, in which case, in a period of resource sufficiency, market
5 sales could be made to reduce the utility’s net power costs for the benefit of customers.
6 PPL/400, Griswold/3. The QF, not the utility, should bear the consequence of the QF’s
7 default. PacifiCorp’s PPA Section 11.4.1 is reasonable and should be approved.
8

9 **c. Lack of Water or Wind Should Not be Included as Events**
10 **of Force Majeure for Wind and Run-of-River**
11 **Hydroprojects. [Issues 5b. iii and v and Issue 11.]**

12 PacifiCorp and Staff are in agreement that the lack of water or wind should not be
13 included as events of force majeure for wind and run-of-river hydroelectric projects.
14 Staff/1000, Schwartz/55. However, ODOE argues that “catastrophic weather-related events”
15 should be included in the definition of force majeure, and Sherman County/Simplot similarly
16 argues that lack of water or wind should be included as events of force majeure. ODOE/6,
17 Keto/7; Sherman County/Simplot, Woodin/15.

18 A QF should be responsible for making reasonable forecasts of its operations,
19 including accounting for its motive force availability in setting its minimum delivery
20 obligation. PPL/400, Griswold/6. None of PacifiCorp’s commercial wind transactions allow
21 for lack of wind as a force majeure event. Staff/1000, Schwartz/55. A potential problem
22 with including lack of wind or water as a force majeure event is the likely dispute that will
23 occur if a QF fails to meet its minimum delivery obligations: Was it due to a force majeure-
24 type lack of wind or water or was it due simply to the QF’s unreasonable estimate of wind or
25 water for establishing the minimum delivery obligation?
26

1 The Commission should hold QFs to the same commercially-reasonable force
2 majeure standards contained in PacifiCorp’s commercial transactions with wind projects, and
3 approve the force majeure provision (Section 14) in PacifiCorp’s proposed PPA. Likewise,
4 PacifiCorp’s default and termination provisions should not be modified in this regard.
5

6 **d. Provisions for Damages Upon Termination When a Utility
is in a Sufficiency Period are Appropriate. [Issue 5b. vii.]**

7 The appropriateness of PacifiCorp’s PPA provision for damages upon termination
8 (Section 11.3.3) during a period of resource sufficiency is based on the same risk of
9 opportunity cost damages discussed above with respect to underdeliveries and failure to meet
10 commercial operation date. The economic harm of not being able to make advantageous
11 sales during a resource sufficiency period due to the seller’s default, whether it leads to
12 termination or not, is just as real as the economic harm caused by having to make
13 disadvantageous market purchases during a period of resource deficiency. PPL/400,
14 Griswold/3-5. The Commission should give recognition to that commercial reality and
15 approve Section 11.3.3 of PacifiCorp’s PPA.
16

17 **3. PacifiCorp’s Time-Certain Cure Periods are Reasonable. [Issue
18 5b. xi.]**

19 Sherman County/Simplot takes exception to PacifiCorp’s time-certain cure periods
20 provided in Section 11.2.2 of its PPA, based on the simplistic view that a “commercially-
21 reasonable time,” as in Idaho Power’s PPA, is, by definition, reasonable, which suggests that
22 a time-certain cure period must be, by definition, unreasonable. Sherman County/Simplot,
23 Woodin/11. Sherman County/Simplot’s apparent inability to recognize that two different
24 approaches to an issue may both be reasonable, as recognized by Staff (Staff/1000,
25
26

1 Schwartz/38), is no basis for the Commission’s disapproval of PacifiCorp’s cure provisions.
2 As recognized by Staff, PacifiCorp’s cure provisions are reasonable and should be approved.

3 **4. PacifiCorp’s Provisions Regarding the Level of Damages are**
4 **Reasonable. [Issues 5c and 36.]**

5 It appears the only issue with regard to the provisions in PacifiCorp’s PPA regarding
6 the level of damages is the question of whether there should be a cap on damages recoverable
7 through recoupment. See Order No. 05-584, p. 45. While Staff and ODOE offer different
8 proposals for caps on the amount of damages that can be recouped by offsetting future
9 payments to the QF (Staff/1000, Schwartz 53; Staff/1500, Schwartz/11-20; ODOE/6,
10 Keto/16; ODOE/9, Keto/1-2), there is no sound rationale for having any such cap. Such a
11 cap could subject the Company and its customers to additional power expenses should the
12 replacement power cost exceed the cap. PPL/302, Wessling/3. The cost of the QF’s default
13 should be borne entirely by the QF, not the utility and its customers. Accordingly, the
14 Commission should reject the imposition of a cap on the amount of default losses that can be
15 recouped by offsetting future payments to the QF.
16

17 **5. PacifiCorp’s Creditworthiness Terms are Reasonable [Issue 5d].**

18 **a. PacifiCorp’s Creditworthiness Requirements are**
19 **Reasonable and Consistent With the Order.**

20 The Order at page 45 states: “We are persuaded that all QFs should be required to
21 establish creditworthiness by making a set of representations and warranties that the QF has
22 good credit, *including* that it is current on existing debt obligations and has not been a debtor
23 in a bankruptcy proceeding within the preceding two years.” (emphasis added.) The parties
24 opposing PacifiCorp’s creditworthiness requirements take the position that the two
25 representations quoted above are the only representations that can be required by the utilities.
26

1 ODOE/6, Keto/3; Sherman County/Simplot, Woodin/12. However, use of the word
2 “including,” indicates that the Commission anticipated that other representations and
3 warranties regarding good credit could be reasonably required. PacifiCorp’s additional
4 representations and warranties contained in Section 3.2.7 of its PPA are such reasonable
5 additional requirements.

6
7 Moreover, the additional requirement for QFs larger than three megawatts that they
8 meet the Credit Requirements set forth in Section 1.8 of the PPA [Issue 5d. v] is likewise
9 consistent with the Order. PPL/302, Wessling/4-5; Staff/1000, Schwartz/10. The Credit
10 Requirements are not beyond what is allowed under the Order, and it is not unreasonable to
11 allow PacifiCorp to not require that the smaller QFs under three megawatts meet the Credit
12 Requirements in addition to the other representations and warranties. As noted by Staff, in
13 response to ODOE’s concern with the Credit Requirements that QFs up to 10 megawatts in
14 size are unlikely to have a senior unsecured debt rating, the provision allows for satisfaction
15 of the Credit Requirements by other indicia of creditworthiness. Staff/1000, Schwartz/10.
16 The provision for QFs meeting the Credit Requirements is reasonable and should be
17 approved. As the Commission should note, the establishment of good credit is not an
18 absolute requirement, it is an alternative to posting default security.

19
20
21 **b. PacifiCorp’s PPA is Clear Regarding the Need for Default Security. [Issue 5d. iv.]**

22 Contrary to concern raised by Sherman County/Simplot, Section 3.2.7 of PacifiCorp’s
23 PPA clearly states that “Seller need not post security under Section 10 for PacifiCorp’s
24 benefit in the event of Seller’s default, provided that Seller warrants all of the following.”
25 PPL/302, Wessling/5; Staff/1000, Schwartz/11. No clarification is needed in this regard.
26

1 **6. PacifiCorp’s Indemnification Provision is Reasonable and**
2 **Consistent with the Order. [Issue 5e.]**

3 Sherman County/Simplot takes the position that PacifiCorp’s indemnification
4 provision (Section 12.1), which requires Seller to indemnify PacifiCorp “to and at the point
5 of delivery,” should also require PacifiCorp to indemnify the Seller at the point of delivery.
6 Sherman County/Simplot, Woodin/13. However, as the Company and Staff pointed out, the
7 QF is responsible for delivery of power up to and including the point of delivery, and the
8 indemnification language properly conveys that responsibility. PPL/400, Griswold/6;
9 Staff/1000, Schwartz/54. It would be nonsensical to require, as proposed by Sherman
10 County/Simplot, that each party indemnify the other for events occurring at the point of
11 delivery. The Commission should not require any change to the Company’s indemnification
12 provision.
13

14 **B. PacifiCorp’s Contracting Procedures and Timelines for Standard PPAs**
15 **Should be Specified in Its Schedule 37. [Issue 6.]**

16 As filed, PacifiCorp’s Schedule 37 sets contracting procedures and timelines for
17 certain events. Staff recommended that additional timelines be specified, and PacifiCorp
18 agrees that to the extent any of a QF’s written comments and proposals for a standard
19 contract do not require significant time to analyze and do not contain significant deviations
20 from the standard contract, the Company believes that a 15 business day response time is
21 adequate for each of the four steps (a) through (d), as outlined by Staff. PPL/400,
22 Griswold/7. However, it should also be clear that if a QF has not completed its delivery of
23 information, then the timeline should be extended by the number of days until the delivery of
24 the necessary information by the QF. *Id.*
25
26

1 **C. Increased Capacity Above the Original Nameplate Rating Should be**
2 **Addressed Through Weighted Average Pricing. [Issue 8.]**

3 Staff recommends that the Commission direct the utilities to amend the standard
4 PPAs to spell out certain treatment of additional generation resulting from efficiency
5 improvements or necessary equipment replacement, including a provision that payments for
6 generation resulting from any additional capacity (above the original nameplate capacity),
7 installed after the effective date of the PPA, should be based on avoided cost rates as of the
8 date of the improvement or equipment or replacement. Staff/1000, Schwartz/64.

9 PacifiCorp is generally in agreement with Staff’s recommendation, but notes the
10 difficulty in administering such a contract provision, due to the use of the nameplate rating as
11 the price threshold for existing versus current avoided cost rates, inasmuch as a QF rarely
12 runs at its nameplate rating. PPL/400, Griswold/8-9. Accordingly, the Company
13 recommends that the PPA provide for pricing of such an upgrade in the same way the
14 Company approaches similar commercial arrangements – that is, a new contract price should
15 be calculated for the *overall* QF project, including the upgrade or improvement, based on the
16 weighted average of the existing capacity and/or energy of the QF at the avoided cost rates
17 on the effective date of the original PPA and the capacity and/or energy at the avoided cost
18 rates in effect at the time of the upgrade or improvement. PPL/400, Griswold/8-9. Further,
19 the new contract pricing would become effective on the commercial operation date of the
20 upgraded QF project, with the other terms and conditions as originally contained in the PPA
21 continuing in force. *Id.* Consistent with Staff’s proposal, such pricing mechanism for
22 upgraded projects would only be applicable to QF projects less than 10 megawatts.
23
24
25
26

1 **D. PacifiCorp’s Insurance Requirements are Reasonable and Appropriate.**
2 **[Issue 9.]**

3 Consistent with standard industry practice, Section 13.2 of PacifiCorp’s PPA (as well
4 as Idaho Power and PGE’s PPAs) requires that the QF carry insurance with an insurance
5 company rated by A.M. Best Company. PacifiCorp’s PPA requires that the rating be no
6 lower than an “A-.” Staff and Sherman County/Simplot take issue with such a rating
7 requirement, proposing that it would be adequate to simply require that the QF obtain
8 insurance from any insurance company writing insurance coverage in Oregon. Staff/1300,
9 Dougherty/2; Sherman County/Simplot, Woodin/15. However, adopting such a reduced
10 standard would expose the utilities and their customers to greater risk that the insurer will not
11 be able to meet its obligations to a QF. Requiring at least an A- rating is a reasonable means
12 of insuring a prudent choice in the insurer selected to provide coverage for the QF operation.
13 Mr. Dougherty’s recommendation of allowing a B+ or better rating, if the Commission
14 decides that the utilities can require a minimum rating from A.M. Best Company, is certainly
15 better than no rating requirement, but it would be preferable to require a rating more solidly
16 within the “Secure” category (i.e., at least A-), as it would reflect reduced risk for the QF, the
17 Company and its customers. PPL/600, Reinhart/3.
18
19

20 **E. PacifiCorp’s Avoided Cost Inputs and Calculations are Reasonable.**
21 **[Issues 15-20.]**

22 **1. PacifiCorp Used Reasonable Natural Gas Price Forecasts and**
23 **Forward Price Projections. [Issues 15-17.]**

24 PacifiCorp’s natural gas price forecasts and its forward electricity price projections
25 are based on its Official Price Projection, which is applied consistently for all uses requiring
26 long-range commodity price assumptions, including integrated resource planning,

1 competitive resource acquisitions and financial reporting. PacifiCorp’s Official Price
2 Projections are prepared on a quarterly basis, and the last one published prior to, and used in,
3 the Company’s avoided cost calculation in this case was March 31, 2005. PPL/500,
4 Engberg/2, 4.
5

6 Noting that natural gas prices have shifted substantially since the time of PacifiCorp’s
7 compliance filing, Sherman County/Simplot suggests that the utility should resubmit
8 compliance filings with updated gas prices based on today’s forward gas prices. Sherman
9 County/Simplot, Reading/10-11. Such an approach is simply unworkable, as it would result
10 in a never-ending attempt to calculate avoided costs based on current gas prices, which, by
11 the time there can be a resolution as to the proper “current” prices, will already be superseded
12 by new prices. The Commission should reject Sherman County/Simplot’s suggestion.
13

14 Contrary to ODOE’s witness Carver, PacifiCorp does not rely on a consultant’s
15 forecast for its short-range forecast of natural gas prices, but rather relies on market prices for
16 the first six years, including market prices for Rockies/Opal, where PacifiCorp conducts gas
17 transactions. PPL/500, Engberg/3. Thus, Dr. Carver’s criticism regarding PacifiCorp’s
18 short-range forecast is unfounded. As to long-range natural gas prices, Dr. Carver
19 recommends that PacifiCorp should merely apply nominal inflation to natural gas prices
20 beyond the period for which NYMEX futures prices are available. ODOE/7, Carver/5. Dr.
21 Carver’s recommendation is not well-founded and should be rejected, as it would ignore any
22 available credible analysis and emerging events that would support price escalation different
23 than nominal inflation. PPL/500, Engberg/7.
24
25
26

1 Similarly, Dr. Carver’s recommendation that the Commission apply a fixed basis
2 differential (an adjustment to reflect the difference in prices between two markets) to
3 NYMEX Henry Hub prices to derive prices for western points of natural gas delivery should
4 likewise be rejected as it would ignore actual shifts in market prices for western points of
5 delivery in relation to Henry Hub prices, and would displace valid market prices for the
6 Rockies/Opal market with a fixed, static basis differential assumption. PPL/500, Engberg/7-
7
8 8. Both of Dr. Carver’s recommendations would displace real market information with static
9 assumptions, and should be rejected.

10 **2. PacifiCorp’s Sufficiency Period is Appropriately Determined.**
11 **[Issue 18.]**

12 Various parties take issue with aspects of PacifiCorp’s determination of its resource
13 sufficiency period, based largely on inaccurate, invalid or inappropriate assumptions. The
14 Commission should affirm the Company’s resource deficiency/sufficiency determination,
15 which reflects the addition of a combined cycle combustion turbine (“CCCT”) in 2010. That
16 determination is consistent with the Company’s 2004 IRP, which initially assumed a new
17 CCCT being added in 2009. However, with the 2004 IRP update, the 2009 CCCT was
18 eliminated and a CCCT is now expected to be added in 2012. PPL/105, Widmer/3-4. The
19 end of the Company’s sufficiency period is that point in time at which the Company becomes
20 both energy and capacity deficit, and needs to add a baseload resource, which the proxy plant
21 is intended to represent. PPL/105, Widmer/2.

22
23 ICNU witness Falkenberg’s suggestion that the Company is now resource deficit in
24 part because it is building new baseload resources is incorrect and should be disregarded,
25 since such resources that are being built were already committed to and not avoidable
26

1 through the acquisition of QF resources. PPL/105, Widmer/3. Similarly, Mr. Falkenberg’s
2 concern regarding the inclusion of a forecast of short-term firm sales and purchases, as well
3 as Sherman County/Simplot witness Woodin’s suggestion that the Company should eliminate
4 “planned resources” in establishing avoided cost rates, are based on inaccurate assumptions.
5 The Company did *not* include a forecast of planned transactions in its deficiency/sufficiency
6 calculation. PPL/105, Widmer/5-6. Mr. Woodin’s recommendation to eliminate resource
7 sufficiency and Mr. Falkenberg’s similar proposal based on adding a CCCT in 2006 are
8 based on fundamentally incorrect assumptions and should be disregarded.
9

10 **3. The Commission Should Not Adopt ICNU’s Proposed Natural Gas**
11 **Index Pricing During the Sufficiency Period.**

12 ICNU witness Falkenberg proposes that the Commission require the utilities to offer a
13 natural gas indexed rate option during the sufficiency period. ICNU/200, Falkenberg/9. The
14 Commission should reject ICNU’s proposal for at least one very fundamental reason. During
15 the period of sufficiency, the utilities will meet incremental resource requirements with
16 market resources. In such a case, it is clearly more appropriate to base avoided costs on the
17 wholesale market price of electricity, thereby reflecting the costs QF resources would allow
18 utilities to avoid. The market price of electricity is based on a weighting of resources
19 expected to be on the margin. However, there are other fundamentals involved which cause
20 the market price of electricity, rather than gas, to be a better predictor of the costs a QF
21 would allow a utility to avoid during the sufficiency period. PPL/105, Widmer/8; Staff/1600,
22 Chriss/3. Accordingly, ICNU’s proposal should be rejected, as it would be less reflective of
23 utilities’ avoided costs.
24
25
26

1 **F. PacifiCorp’s Provision Regarding Metering Errors is Reasonable. [Issue**
2 **22.]**

3 Section 8.3 of PacifiCorp’s PPA provides that if inspections or tests of the metering
4 which records the QF’s sales to PacifiCorp disclose an error exceeding 2%, either fast or
5 slow, a correction of previous readings shall be made, and an appropriate correction in
6 billings or payments resulting from the correction in meter records shall be made. Sherman
7 County/Simplot takes exception to PacifiCorp’s provision, asserting that it is unreasonable
8 for the QF to pay for *any* meter errors, since the utility is responsible for the metering
9 equipment. Sherman County/Simplot, Woodin/17-18. Sherman County/Simplot incorrectly
10 assumes that the utility would necessarily be able to prevent metering errors. It would be
11 unreasonable to require the utility to pay the QF for energy not actually delivered in the event
12 of a meter error that occurs between meter testing as a result of a latent defect in the
13 manufacture of the meter. PacifiCorp’s provision regarding meter errors is consistent with
14 similar such provisions in its retail tariffs and should be approved. *See* PP&L Oregon tariff,
15 P.U.C. Or. No. 35, Rule 8.
16

17 **G. It Would Be Inappropriate for the Commission to Make Findings**
18 **Regarding Revised Protocol in this Proceeding. [Issue 25.]**

19 ICNU witness Falkenberg proposed that the Commission find that the prices
20 determined in this case are equal to those of a comparable market resource, as defined in
21 Revised Protocol, the interjurisdictional allocation method adopted by the Commission for
22 the purposes of allocating PacifiCorp costs to Oregon. (See Order No. 05-021.) ICNU/200,
23 Falkenberg/15. Staff makes a similar recommendation. Staff/1000, Schwartz/75.
24

25 The comparison of New QF Contracts to Comparable Resources is a mechanism in
26 Revised Protocol designed to allow states to implement different pricing policies and

1 methodologies for New QF Contracts, as has been done in the past, without shifting costs to
2 other states. Deeming avoided costs to be equal to the cost of Comparable Resources would
3 make the provision in Revised Protocol meaningless. That is, if other states took this
4 approach, no costs associated with New QF Contracts would ever be assigned situs, since
5 those states would simply “deem” QF prices to be equal to “avoided cost.”
6

7 Moreover, there is no evidence in this proceeding that the avoided cost prices
8 determined in this case are equal to those of a Comparable Resource. The costs of
9 Comparable Resources are not administratively determined (as are the standard avoided costs
10 in Oregon) and would be based on the options available to the Company at the time the New
11 QF Contracts are entered into. The determination of the relationship of the costs of a New
12 QF Contract to the cost of a Comparable Resource should be made, if the issue is raised by a
13 party, on a case-by-case basis in the context of a rate case, when appropriate information can
14 be presented to the Commission. The Commission should reject the ICNU and Staff
15 proposals to deem the Oregon avoided costs to be equal to the costs of Comparable
16 Resources, and should find that this issue can be raised by a party in a rate case when the cost
17 of a New QF Contract is included in the Company’s revenue requirement. PPL/105,
18 Widmer/9-11.
19

20 **H. Uncontested and Stipulated Issues. [Issues 4, 5b. xii, 21.]**

21 PacifiCorp supports the Partial Stipulation filed by ODOE on February 6, 2006 and
22 recommends that the Commission find that the terms of Exhibit A attached to the Partial
23 Stipulation are reasonable and should be adopted. Further, the Company has agreed with
24 Staff’s recommendation that Section 11.3.2 of PacifiCorp’s PPA be replaced with a provision
25
26

1 providing for the continuation of the terms of the agreement, including the contract price, in
2 the event the PPA is terminated due to seller's default. PPL/400, Griswold/10. Finally, there
3 is no opposition to Staff's recommendation that the standard PPAs include a waiver of the
4 non-energy attributes of power delivered to the utility, consistent with the Commission's
5 Order in AR 495. Staff/1000, Schwartz/70-71.
6

7 **CONCLUSION**

8 PacifiCorp respectfully requests that the Commission approve PacifiCorp's Schedule
9 37, Avoided Cost Purchases From Qualifying Facilities of 10,000 kW or Less, and find that
10 the terms of PacifiCorp's PPAs (PPL/401 and PPL/402) are reasonable and consistent with
11 Order No. 05-584. Adoption of the Company's standard PPAs for QF projects up to 10 MW
12 in size will strike an appropriate balance of PURPA's objectives directed at promoting QF
13 development and ensuring ratepayer neutrality.
14

15 DATED: March 20, 2006.

16 STOEL RIVES LLP

17
18
19 _____
20 John M. Eriksson
21 Sarah Adams Lien
22 Attorneys for PacifiCorp
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document upon the parties of record in this proceeding by electronic mail where available and by first-class mail, addressed to said parties/attorneys' addresses as shown below:

Randy Allphin
Idaho Power Company
PO Box 70
Boise ID 83707-0070
rallphin@idahopower.com

Brian Cole
Symbiotics, LLC
PO Box 1088
Baker City OR 97814
bc@orbisgroup.org

Mick Baranko
Douglas County Forest Products
PO Box 848
Winchester OR 97495
mick@dcfp.com

Bruce Craig
Ascentergy Corp
440 BenMar Drive, Suite 2230
Houston TX 77060
bcraig@asc-co.com

R Thomas Beach
Crossborder Energy
2560 Ninth Street, Suite 316
Berkeley CA 94710
tomb@crossborderenergy.com

Randy Crocket
DR Johnson Lumber Company
PO Box 66
Riddle OR 97469
randyc@drjlumber.com

Laura Beane
PacifiCorp
825 Multnomah, Suite 800
Portland OR 97232-2153
laura.beane@pacificorp.com

Chris Crowley
Columbia Energy Partners
PO Box 1000
La Center WA 98629
ccrowley@columbiaep.com

Jeff Bissonnette
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland OR 97205-3404
jeff@oregoncub.org

Data Request response Center
PacifiCorp
825 NE Multnomah, Suite 800
Portland OR 97232
datarequest@pacificorp.com

Karl Bokenkamp
Idaho Power Company
PO Box 70
Boise ID 83707-0070
kbokenkamp@idahopower.com

Carel de Winkel
Oregon Department of Energy
625 Marion Street NE
Salem OR 97301
carel.dewinkel@state.or.us

Joanne M Butler
Idaho Power Company
PO Box 70
Boise ID 83707-0070
jbutler@idahopower.com

Thomas M. Grim
Cable Huston Benedict Haagensen &
Lloyd
1001 SW Fifth Avenue, Suite 2000
Portland OR 97204-1136
tgrim@chbh.com

1 Craig Dehart
2 Middlefork Irrigation District
3 PO Box 291
4 Parkdale OR 97041
5 mfidcraig@hoodriverelectric.net

4 Elizabeth Dickson
5 Hurley, Lynch & Re PC
6 747 SW Mill View Way
7 Bend OR 97702
8 eadickson@hrl-law.com

7 Jason Eisdorfer
8 Citizens' Utility Board of Oregon
9 610 SW Broadway, Suite 308
10 Portland OR 97205
11 jason@oregoncub.org

10 Randall J Falkenberg
11 RFI Consulting, Inc.
12 PMB 362
13 8351 Roswell Road
14 Atlanta GA 30350
15 consultrfi@aol.com

13 John R. Gale
14 Idaho Power Company
15 PO Box 70
16 Boise ID 83707-0070
17 rgale@idahopower.com

16 J Richard George
17 Portland General Electric Co.
18 121 SW Salmon Street
19 Portland OR 97204
20 richard.george@pgn.com

19 Thomas M. Grim
20 Cable Huston Benedict, et al.
21 1001 SW Fifth Avenue, Suite 2000
22 Portland OR 97204-1136
23 tgrim@chbh.com

22 David Hawk
23 J R Simplot Company
24 PO Box 27
25 Boise ID 83707
26 david.hawk@simplot.com

Steven C. Johnson
Central Oregon Irrigation District
2598 North Highway 97
Redmond OR 97756
stevej@coid.org

Barton L. Kline
Idaho Power Company
PO Box 70
Boise ID 83707-0070
bkline@idahopower.com

Alan Meyer
Weyerhaeuser Company
698 12th Street, Suite 220
Salem OR 97301-4010
alan.meyer@weyerhaeuser.com

Monica B. Moen
Idaho Power Company
PO Box 70
Boise ID 83707-0070
mmoen@idahopower.com

Thomas H. Nelson
Thomas H. Nelson & Assoc.
825 NE Multnomah, Suite 925
Portland OR 97232
nelson@thnelson.com

PGE- OPUC Filings
Rates & Regulatory Affairs
Portland General Electric Co.
121 SW Salmon Street, 1WTC0702
Portland OR 97204
pge.opuc.filings@pgn.com

Janet L. Prewitt
Oregon Department of Justice
1162 Court Street NE
Salem OR 97301-4096
janet.prewitt@doj.state.or.us

Lisa F. Rackner
Ater Wynne LLP
222 SW Columbia Street, Suite 1800
Portland OR 97201-6618
lfr@aterwynne.com

1 Peter J. Richardson
Richardson & O'Leary
2 PO Box 7218
Boise ID 83707
3 peter@richardsonandoleary.com

4 Irion Sanger
Davison Van Cleve PC
5 333 SW Taylor, Suite 400
Portland, OR 97204
6 ias@dvclaw.com

7 Lisa C. Schwartz
Oregon Public Utility Commission
8 PO Box 2148
Salem OR 97308-2148
9 lisa.c.schwartz@state.or.us

10 Mark Tallman
PacifiCorp
11 825 Multnomah, Suite 800
Portland OR 97232-2153
12 mark.tallman@pacificorp.com

13 S. Bradley Vvan Cleve
Davison Van Cleve PC
14 333 SW Taylor, Suite 400
Portland OR 97204
15 mail@dvclaw.com

16
17

18 DATED: March 20, 2006

19

20

21

22

23

24

25

26

Michael T. Weirich
Oregon Department of Justice
Regulated Utility & Business Section
1162 Court Street NE
Salem OR 97301-4096
michael.weirich@state.or.us

Paul Woodin
Western Wind Power
282 Largent Lane
Goldendale WA 98620-3519
pwoodin@gorge.net

Linda K. Williams
Kafoury & McDougal
10266 SW Lancaster Road
Portland OR 97219-6305
linda@lindawilliams.net

Bruce A. Wittmann
Weyerhaeuser
Mailstop: CH 1K32
PO Box 9777
Federal Way WA 98063-9777
bruce.wittmann@weyerhaeuser.com

Mark Albert
Marketing and Regulatory Affairs
Vulcan Power Company
1183 NW Wall Street, Suite G
Bend OR 97701
malbert@vulcanpower.com

John M. Eriksson
Attorneys for PacifiCorp