

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1129

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF)	
OREGON)	RULING
)	
Staff's Investigation Relating to Electric)	
Utility Purchases from Qualifying Facilities.)	

DISPOSITION: ISSUES LISTS ESTABLISHED; SCHEDULE MODIFIED

BACKGROUND

On January 20, 2004, the Public Utility Commission of Oregon (Commission) opened an investigation related to electric utility purchases from qualifying facilities (QFs) under the Public Utility Regulatory Policies Act (PURPA).¹ On May 13, 2005, the Commission issued Order No. 05-584 which specified terms and conditions to be included in standard QF contracts. The order directed Idaho Power Company (Idaho Power), Pacific Power & Light (PacifiCorp) and Portland General Electric Company (PGE) (collectively "the electric companies") to make compliance filings implementing Order No. 05-584. The order also indicated that a second phase of Docket No. UM 1129 would be opened to address issues that required further evidentiary development.

Each electric utility filed avoided costs, revised tariffs and new standard QF contracts on July 12, 2005.² Despite finding that the filings generally implemented Order No. 05-584, Commission Staff (Staff) determined, in a Staff Report filed on July 28, 2005, that certain issues of compliance merited further review. At its public meeting, on August 2, 2005, the Commission allowed the filings to go into effect, but ordered that an investigation of the filings be undertaken.

Prehearing conferences were held on August 17, 2005 and October 3, 2005. Phase II of Docket UM 1129 was divided into tracks, with one track addressing compliance issues and another addressing the issues the Commission identified, in Order

¹ The United States Congress passed PURPA in 1978, as codified in the United States Code (USC) at 16 U.S.C. § 824a-3.

² PGE filed Advice No. 05-10; PacifiCorp filed Advice No. 05-006; and Idaho Power filed Advice No. 05-06.

No. 05-584, to be further investigated. Parties agreed to work together to develop issues lists for each track, with the understanding that Staff would assemble a consolidated issues list for each track and that parties would submit comments on the consolidated list. On October 21, 2005, the following parties submitted comments: Staff, PacifiCorp, PGE, Idaho Power, Industrial Customers of Northwest Utilities (ICNU) and Weyerhaeuser. Staff clarified its position in a letter, dated October 31, 2005. On November 7, 2005, the Fair Rate Coalition (FRC) moved to file attached response comments. On November 9, 2005, Staff submitted a letter reporting on a settlement meeting held on November 1, 2005.

DISCUSSION: TRACK I – PHASE I COMPLIANCE ISSUES

Staff submitted a lengthy, consolidated list of issues with the understanding that inclusion of only one issue, Issue No. 25, was contested by any party.³ Parties submitted comments regarding several issues, however, as discussed below. Subsequently, Staff provided an update on parties' positions on certain proposed issues, as also discussed below.

Issue Nos. 1, 2 and 3

PGE contends that it is not necessary to include these issues in the final issues list as they merely restate the broad purpose of the docket's first phase.

Issue No. 5.b.viii:

PacifiCorp agrees to modify Section 11.4.1 of its standard contract as proposed by Issue No. 5.b.viii. PacifiCorp indicates that it has discussed this position with the parties raising the issue, Sherman County and J. R. Simplot, and represents that it has been authorized to state that these parties are satisfied with the resolution of the issue.

Issue No. 5.b.xiv:

Staff indicates, in its November 9th letter, that the Oregon Department of Energy agreed, at the settlement meeting, to withdraw this issue based on promises by PGE and Idaho Power to include a clause in their standard contracts that specifies that QF contracts do not terminate upon the repeal of PURPA, unless such termination is mandated by federal or state law.

Issue No. 9.c:

In its report, dated November 9, 2005, Staff withdrew this issue.

³ In a letter filed on October 28, 2005, Staff clarified that two issues included on the Phase II issues list, Issue No. 2 and Issue No. 6, were also intended to be addressed, at least with regard to standard contracts, on the track I schedule.

Issue No. 10:

Idaho Power asserts that this issue seeks to revisit topics already addressed in Order No. 05-584, or to raise new topics for the first time. Idaho Power argues that giving any topic such attention in a compliance investigation would be “inappropriate and unfair.” Idaho Power also observes that certain topics, such as dispute resolution (subissue (c)) and default issues (subissues (e) and (i)) are covered by other issues. FRC submitted response comments (along with a motion to file the comments). FRC argues that it is appropriate to consider, as raised by Issue No. 10, whether the standard contracts filed by the electric companies appropriately implement PURPA law and Order No. 05-584 for QFs under 100 kW. FRC also argues that the perspective of very small QFs is needed on general issues, such as dispute resolution and default.

Although PacifiCorp does not object in general to Issue No. 10, PacifiCorp takes issue with subissues (b) and (f). PacifiCorp argues that the Commission fully addressed pricing options in Order No. 05-584 and that consideration of alternative price options would inappropriately revisit the topic. PacifiCorp also asserts that the Commission has already determined that the filed standard contracts have an effective date and are not subject to refund. In any case, PacifiCorp observes that the Commission does not have the authority to retroactively change the terms of previous contracts. FRC responds that retroactivity is not an issue to the extent that QFs do not have an existing contract.

Issue No. 18.f:

In a letter filed on November 9, 2005 letter, Staff reports that ICNU and Weyerhaeuser withdrew this issue, based on parties’ understanding that PacifiCorp determines whether it is resource sufficient or deficient on a system wide basis.

Issue No. 23:

Staff reports, in the letter filed on November 9, 2005, that ICNU and Weyerhaeuser withdrew this issue, based on parties’ understanding that as PacifiCorp is resource deficient in Utah, proxy plant costs should not be based on an Oregon plant.

Issue No. 25

The Revised Protocol states, in relevant part: “Costs associated with any New QF Contract, which exceed the costs PacifiCorp would have otherwise incurred acquiring Comparable Resources, will be assigned on a situs basis to the State approving such contract.” ICNU and Weyerhaeuser assert that the Oregon methodology to calculate avoided costs should result in costs that are consistent with costs that PacifiCorp would otherwise incur to Comparable Resources. Staff recommends addressing Issue No. 25 in order to “clarify that the Commission’s methodology for calculating avoided costs produces results consistent with the costs PacifiCorp would incur for resources it would acquire but for purchases from QFs.”

PacifiCorp contends that the avoided cost methodology adopted in Order No. 05-584 is unaffected by the Revised Protocol. Rather, PacifiCorp indicates that to the extent “the Revised Protocol’s provision regarding the situs assignment of a portion of QF power purchase agreement costs (those costs above the cost of a “Comparable Resource”) ever comes into play, it will be in the context of a case addressing PacifiCorp’s recovery of those costs.” PacifiCorp advises that as Comparable Resources and their costs will change over time and that “it would be an unnecessary and wasteful use of the Commission’s and parties’ time and resources to undertake analysis of Revised Protocol issues in this docket.”

Issue Nos. 26 and 27:

As PacifiCorp agrees with the proposed wording of Sections 2.2.2 and 3.2.3 of its standard contract, PacifiCorp advises that the issues should be removed.

General Comments About All Phase I Compliance Issues

PGE observes that the proposed issues list is extensive, including over 80 issues, and suggested the following categorization of the issues:

- Priority A: Issues that address the compliance of specific elements of a standard contract or tariff with the provisions of Order No. 05-584. PGE contends that issues in this category should be the focus of the compliance portion of the second phase of Docket No. UM 1129.
- Priority B: Issues, such as Issue Nos. 5, 7, 9 and 11, that consider the “reasonableness” of specific elements of a standard contract or tariff in context of the provisions of Order No. 05-584. PGE does not object to addressing such issues but observes that the value of doing so is less than the value of addressing Priority A issues.
- Priority C: Issues that propose new terms, conditions or requirements not directly related to any provision of Order No. 05-584. PGE asserts that such issues would be more properly addressed in the second track of the second phase of Docket No. UM 1129.

Track II Issues Applied to Track I

As clarified in Staff’s letter, dated October 28, 2005, Staff identified two Track II issues, Nos. 2 and 6, as being relevant to standard contracts for QFs with design capacities of 10 MW or less: 2) In the event of the inability of a QF to establish creditworthiness, determination of an appropriate amount of default security to be required; and 6) Cap on amount of default losses that can be recouped, pursuant to future QF contract payment reductions. Staff proposes that these two issues be addressed, as they relate to standard contracts for QFs with design capacities of 10 MW or less, on an expedited basis that would parallel review of track one compliance issues.

RULING: TRACK I – PHASE I COMPLIANCE ISSUES

The fundamental purpose of this investigation of the tariffs and standard contracts filed by the electric companies is to ensure that they comply with directives in Order No. 05-584, as well as any other applicable laws, rules or orders. Issues of compliance have raised clarification questions, however, as well as inquiries about the reasonableness of proposed terms and conditions in context of the directives of Order No. 05-584. As a result, parties have proposed an extensive list of issues.

With the exceptions of objections to all of, or parts of Issue No. 10 and to Issue No. 25, parties essentially agree to address this full list.⁴ The goal appears to be to fully negotiate and develop tariffs and standard contracts for QFs under 10 MW. Although the first three issues are very broad and are arguably unnecessary since parties have developed a comprehensive list of specific issues, they outline the general objectives of the compliance investigation and need not be excluded.

Arguably, many of the specific issues proposed for review are beyond the scope of a compliance investigation and as PGE suggests, it might be appropriate to prioritize the issues. Given the general agreement among the parties to undertake the proposed issues list, however, and in the absence of sufficient guidance from the parties regarding prioritization, the entire list, as modified by parties' comments, and minus Issue No. 10, is adopted.⁵ Appendix A provides a full listing of all issues. As requested by parties, Staff's original numbering of the issues is retained and issues that are withdrawn or excluded are so denoted.

It is appropriate to exclude Issue No. 10. This issue, with all of its subparts, would unduly expand the scope of this investigation and all parties do not agree that it should be addressed. Rather than seeking to refine the tariffs and standard contracts filed by the electric companies, Issue No. 10 seeks to create *new* contracts and tariffs (as acknowledged by FRC in response comments). The inappropriateness of undertaking such an effort is illustrated by the fact that development of a standard contract for QFs under 200 kW would require yet another round of investigation after these contracts were filed. The Commission has not authorized parties to undertake this effort. Order No. 05-584 opened a second phase of Docket No. UM 1129 in order to address certain issues, which included one potential issue specific to QFs with a design capacity at or under 200 kW,⁶ while Order No. 05-899 opened a compliance investigation of tariffs and contracts filed pursuant to Order No. 05-584. Neither order directed parties to address the issues raised by FRC.

⁴ Comments by PacifiCorp slightly modify the list by removing Issue Nos. 5.b.viii., 26 and 27 due to agreement by PacifiCorp to modify relevant contract language.

⁵ Although PGE correctly observes that the proposed issues range from directly to indirectly relating to the directives of Order No. 05-584, PGE offers little guidance about how to implement its recommendation that the issues be prioritized. Consequently, the issues list is adopted without prioritization.

⁶ Order No. 05-584 provided that QFs with a design capacity of 200 kW or less should not be required to obtain general liability insurance, but indicated that should electric utilities find available insurance, that the issue could be raised again in this second phase of the proceeding.

With regard to Issue No. 10(f), the Commission already determined the effective date of standard contracts filed under Order No. 05-584, and although the issue was raised in the first phase of Docket No. UM 1129, the Commission did not indicate that standard contract terms would be applied retroactively. To the extent Issue No. 10 raises issues that overlap with other issues, FRC will have a sufficient opportunity to present its perspective. FRC is free to negotiate alternate terms and conditions with electric companies and may request assistance from the Commission under the dispute resolution rules that are finally adopted. Alternatively, FRC could request that the Commission open a separate proceeding, or further phase this proceeding, to develop a standard contract for QF projects that are 100 kW or less.

To the extent that Issue No. 25 merely seeks to clarify the intersection of PacifiCorp's Revised Protocol with the calculation of avoided costs as Staff recommends, it is appropriate to address the issue in this proceeding. This compliance investigation should not be used, however, to undertake serious analysis of Revised Protocol issues.

As parties agree that Track II Issue Nos. 2 and 6 should be addressed with regard to standard contracts as well as with regard to non-standard QF contracts, these two issues should simply be added to the Track I issues list.⁷ In order to not interfere with the pre-established numbering system, I have added both issues to the end of the issues list and have identified them as Nos. 35 and 36.

The Issues List for Track I of this second phase is composed of Issues 1 through 36, as set forth in Appendix A.

DISCUSSION: TRACK II – PHASE II ISSUES

Staff asserts that Track II of this proceeding should be used primarily to consider the issues identified by the Commission in Order No. 05-584. Staff explains that the first ten issues in Staff's proposed issues list for Track II capture the issues identified and discussed in Order No. 05-584. Staff recommends adding only two issues.

Proposed Issue No. 11 would address the use of competitive bidding to establish QF pricing. Staff includes the issue because parties in UM 1182 agreed to move the issue to UM 1129 after Order No. 05-584 established a second phase. Proposed issue No. 12 would explore issues related to recent changes in PURPA law.

Staff declined to recommend that any other issues be addressed during the second track of the second phase of Docket No. UM 1129, rejecting proposals to address interconnection issues and issues regarding debt incurred by the electric companies under QF contracts. Staff represents that interconnection technical standards, procedures and agreements would be better addressed in a separate proceeding and pledges to ask the Commission to open such an investigation. With regard to issues concerning debt associated with QF contracts, Staff is concerned that "debt imputation" is not one of the factors delineated by 18 CFR § 292.304(e).

⁷ PGE initially opposed attention being given to Track II Issue Nos. 2 and 6 on an expedited basis, but presumably PGE's objection was obviated by Staff's clarification that the two issues would be addressed on a Track I schedule only as they applied to standard contracts.

PacifiCorp originally raised the issue of debt imputation in briefs submitted in the first phase of this docket. Staff replied then, that issues related to debt imputation would be better addressed in rate cases, rather than through adjustments to QF contracts. PacifiCorp continues to assert now, however, that “the debt issue resulting from new accounting rules must be addressed by the Commission if the avoided cost rates are to comply with the PURPA requirement of ratepayer neutrality.” Idaho Power concurs that the topic should be addressed. Staff responds that it is not clear that “PURPA regulations allow for consideration of direct or imputed debt in calculating avoided costs.” Staff also asserts that concerns about debt imputation are minimized by past regulation permitting timely cost recovery of power purchase costs. ICNU and Weyerhaeuser add that it is not appropriate to consider reducing avoided costs to reflect debt imputation “because the offsetting risks related to potential utility ownership of avoided resources are not included in the determination of the utilities’ avoided costs.”

RULING: TRACK II – PHASE II ISSUES

In Order No. 05-584, the Commission stated its intent to facilitate the development of QFs of all sizes and acknowledged that issues related to the negotiation of non-standard contracts required further development. Consequently, the Commission opened this phase in order to address the issues identified in Order No. 05-584. Staff has correctly identified the issues listed in Order No. 05-584 at page three as the first ten issues to be addressed in Track II of this second phase. It is also appropriate to address the two additional issues that Staff proposes. Both issues impact the negotiation of non-standard contracts and both arose after issuance of Order No. 05-584.

The issue of debt imputation should also be addressed, however. The first issue identified by the Commission is very broad—i.e., the development of negotiation parameters and guidelines for nonstandard QF contracts. PacifiCorp and Idaho Power have legitimately raised the issue of whether debt imputation is a factor that should be considered. Although Staff indicates that PURPA regulations may not allow for consideration of debt imputation, the issue has not been fully discussed and its resolution is not clear. Consequently, debt imputation should be addressed and I have added a thirteenth issue with placeholder language. Parties are free to refine the issue, as appropriate.

The Issues List for Track II of this second phase is composed of Issues 1 through 13, as set forth in Appendix B.

DISCUSSION: REQUEST TO MODIFY SCHEDULE

As Staff reported in its letter dated November 9, 2005, parties agree that the procedural schedule in this proceeding should be adjusted. With regard to official

dates that have already been established,⁸ Staff proposes the following modifications:

Phase II Investigation Issues	Current Due Date	Requested Due Date
Simultaneous direct testimony due	January 24, 2006	February 20, 2006
Rebuttal testimony due	February 21, 2006	March 24, 2006
Hearing	March 15, 2006 (Details TBD, including determination of whether additional hearing days needed)	April 18-19, 2006 (Details TBD)
Briefs	Dates TBD at hearing	Dates TBD at hearing

RULING: REQUEST TO MODIFY SCHEDULE

Parties should allocate sufficient time to fully identify and address all issues pertinent to the negotiation of non-standard contracts, as there will not be an opportunity during a compliance phase to further develop such issues. It is, therefore, appropriate to add additional time to the schedule as parties see fit. The schedule is modified, as requested.

Dated this 17th day of November, 2005, at Salem, Oregon.

Traci A. G. Kirkpatrick
Administrative Law Judge

⁸ Staff indicates that parties will hold two settlement workshops: 1) A settlement workshop on Phase I Compliance Issue No. 10 will be held on November 21, 2005, from 9:30 a.m. to 12:00 p.m.; and 2) a settlement workshop on Phase II investigation issues will be held on March 8, 2006, (with parties distributing settlement proposals on March 3, 2006). Settlement activities occur outside the purview of Commission overview, however. Consequently, it is not necessary to include settlement activities on the procedural schedule for a docket and the dates for settlement activities may be established or changed without approval from the Commission.

APPENDIX A

UM 1129 PHASE I COMPLIANCE ISSUES LIST

Issues Related to All Electric Companies

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

- v. Is the definition of Letter of Credit in § 1.17 of PacifiCorp’s contract consistent with Order No. 05-584 at 45.
- b. Are the default and termination provisions reasonable? For example:
 - i. How should the “contracted for” amount of energy be determined, and should it be consistent in all standard contracts?
 - ii. Do net delivery requirements of standard contracts comply with Order No. 05-584 that requires firm and intermittent resources to be valued equally?
 - iii. Should reduced resource availability due to weather-related events trigger default provisions for renewable resource projects that rely on natural motive force?
 - iv. Does a requirement to specify monthly and annual minimum generating output—below which the Qualifying Facility would be in default—reasonably comply with the Commission’s order, even if output levels are based on projections under adverse natural motive force conditions? Should the Commission instead set a minimum annual delivery requirement, in percent, to be applied to the Qualifying Facility’s expected generating output?
 - v. Is it reasonable for the utility to terminate the contract for “under-deliveries” due to weather, or for delays in producing power?
 - vi. Is it consistent with the order to establish that the Qualifying Facility has breached the agreement if the facility does not meet the specified commercial operation milestones, with no exception during the utility’s resource sufficiency period, as in PGE’s standard contract?
 - vii. Should § 11.3.3 of PacifiCorp’s contract be limited in applicability only to those situations where the utility is in deficit situation per its Integrated Resource Plan?
 - viii. **WITHDRAWN**
 - ix. Is it reasonable that § 11.4.1 of PacifiCorp’s contract imposes damages for under-delivery of production delays during the utility’s resource sufficiency period?
 - x. Should PGE’s and Idaho Power’s default provisions take into account sufficient monies to provide for continued facility operations and debt payment in the event future payments are

temporarily reduced as a penalty for under-delivery, as in PacifiCorp's contract (§ 11.4.2)?

- xi. Is it reasonable for PacifiCorp to limit the opportunity to cure period to a time certain after the default (§ 11.2.2)? Should the company instead use the phrase "commercially reasonable time" as in Idaho Power's contract (§ 18.2.1)? Should the opportunity to cure provisions in PacifiCorp's contract apply to all events of default and not be limited to just § 11.1.1 and § 11.1.5? Should PGE's contract provide the opportunity to cure in § 10? Should PGE's contract provide for reciprocal default terms as in PacifiCorp's and Idaho Power's contracts?
 - xii. Is it consistent with PURPA that § 11.3.2 of PacifiCorp's contract disqualifies a QF that has been terminated, due to the QF's default, from selling to the utility until after the expiration in the contract? Does this provision extend to a lender that forecloses on the facility and becomes the new Seller? Is it reasonable for PGE to restrict a Qualifying Facility, once terminated, from selling under any other terms than the terminated agreement, as specified in § 10.4?
 - xiii. Is it reasonable for Idaho Power to terminate the contract for failure to deliver a certain level of Net Energy in any contract year (§ 6.3), given that Order No. 05-584 states that the utilities are to purchase all of the output from Qualifying Facilities, and the Shortfall Energy provisions of the contract keep the company whole in such a situation?
 - xiv. **WITHDRAWN**
- c. Is the basis for calculating damages sound, and is the proposed level of damages reasonable both for an event of default and termination resulting from default? For example:
- i. Is the definition of Net Replacement Power Costs in § 1.25 of PacifiCorp's contract consistent with Order No. 05-584 at 45?
 - ii. Should the Shortfall Energy Repayment Price be zero in § 7.3 of Idaho Power's contract if the utility is energy surplus as defined in its Integrated Resource Plan?
 - iii. Is it reasonable for Idaho Power to impose on the Qualifying Facility interest expenses on recoupment power costs (§ 7.5)?

- iv. Is the use of Net Energy Amount in Idaho Power’s contract (§ 1.12 and 6.2) reasonable for determining the Shortfall Energy and damages (Article VII)?
 - d. Are the creditworthiness terms reasonable? For example:
 - i. Is it reasonable for PacifiCorp and Idaho Power to impose security and creditworthiness requirements in addition to representations that the Qualifying Facility has good credit, is current on existing debt obligations and has not been a debtor in the last two years?
 - ii. Is it reasonable for PacifiCorp to require Qualifying Facilities larger than 3 MW to have a long-term debt credit rating by a credit agency in order to meet credit requirements?
 - iii. Is it reasonable that PGE requires a Qualifying Facility to warrant that it will remain current on financial obligations to others throughout the contract term, or post default security?
 - iv. Is it clear in the utilities’ contracts that security measures only come into play if a Qualifying Facility is unable to make these creditworthiness representations?
 - v. Is the definition of Credit Requirements in § 1.8 of PacifiCorp’s contract consistent with Order No. 05-584 at 45?
 - e. Should the indemnity provisions in § 12.1 of PacifiCorp’s contract be consistent for PacifiCorp and the seller? Specifically, should PacifiCorp be required to indemnify the Seller “at the Point of Delivery” rather than “after the Point of Delivery”?
 - 6. Should tariffs for Qualifying Facilities include a detailed list of procedures, including timelines, to comply with the Commission’s directive that such tariffs contain “full details about the process to enter into a standard contract or a negotiated contract,” per Order No. 05-584 at 59? If yes, which procedures and timelines should be included at a minimum, and what timelines are appropriate?
 - 7. Do the administrative and technical requirements in the standard contracts reasonably comply with the intent of Order No. 05-584? For example, should all Qualifying Facilities be required to hire a licensed professional engineer to verify that the facility operates as specified? Is it reasonable to require that the licensed engineer be unaffiliated with the project as in § 1.18 of PacifiCorp’s contract and § 1.10 of PGE’s contract?
 - 8. Should increased Qualifying Facility output resulting from changes in operation of generating equipment—for example, improving its efficiency or operating at a

- higher power factor—qualify for the full avoided cost prices in the tariff as of the effective date of the agreement? Should increased generation resulting from efficiency improvements that increase the project’s output above the nameplate rating specified in the contract be entitled to full avoided cost prices, so long as the project’s nameplate rating remains at or below 10 MW? If so, should the increased generation be priced at the full avoided cost in the tariff as of the effective date of the agreement or as of the date of the improvement? Can Seller change the generator nameplate rating if equipment replacement is necessary?
9. Are PacifiCorp’s, Idaho Power’s and PGE’s insurance requirements reasonable and appropriate? For example:
- a. Is it reasonable and appropriate for PacifiCorp and Idaho Power to require the Qualifying Facility to carry insurance only with companies rated not lower than “A-” by the A.M. Best Company? Is it reasonable and appropriate for PGE to require the Qualifying Facility to carry insurance only with companies rated no less than “A” by the A.M. Best Company?
 - b. Should the utilities instead require Qualifying Facilities to use insurance companies “that are typically and reasonably used for the type of generating equipment used by the Facility”?
 - c. **WITHDRAWN**
10. **EXCLUDED**
11. Should lack of water and lack of wind be included as events of Force Majeure for wind and run-of-river hydro projects?
12. Should the utilities file standard form contracts for the purchase of QF power that is wheeled to their systems over a third-party transmission system? Should any such agreements address issues such as where title to the power changes hands and explicitly state that the purchasing utility purchases the QF’s schedule off of the transmitting utility’s system?
13. Can Seller choose to service some or all of its own load that is not plant parasitic load to determine Net Output? Is it reasonable and appropriate for the Seller to deduct load other than station use from Net Output, as in § 1.24 of PacifiCorp’s contract and § 1.14 in PGE’s contract?
14. If a utility and a Qualifying Facility Seller under 10 MW mutually agree to change a few terms of the standard contract for a facility but still use the applicable standard tariff, is this arrangement considered a PURPA contract in future ratemaking proceedings?

Issues Related to Portland General Electric and PacifiCorp Only

15. Are the natural gas price forecasts that Portland General Electric and PacifiCorp used for determining avoided costs reasonable?
16. What are the appropriate natural gas hubs?
17. Are the forward price projections that Portland General Electric and PacifiCorp used to determine the on-peak and off-peak avoided costs during their projected resource sufficiency periods reasonable?
18. Issues related to the resource sufficiency/deficiency period, including but not limited to the following:
 - a. How are the periods defined?
 - b. What loads were used to compute the period?
 - c. Are the load forecasts recent and accurate?
 - d. Can a utility that is chronically short on capacity and continuously building capacity be considered sufficient?
 - e. Should capacity forecasts impact the sufficiency/deficiency periods?
 - f. **WITHDRAWN**
 - g. Is it appropriate to include short-term firm purchases in baseload capacity when calculating resource sufficiency?
 - h. Is it appropriate that PacifiCorp determines the resource sufficiency period for its avoided costs filing in a different manner than its resource needs in the Integrated Resource Planning process?
 - i. Is it appropriate that PacifiCorp's compliance filing uses CY 2010 as its deficit year for determining avoided costs when the filing shows a deficit of 561 MW in August 2005, growing to a 1,804 MW deficit in July 2009?
 - j. Issues related to how the utilities should forecast Qualifying Facility capacity in determining when the utility will be resource sufficient or resource deficient for the purposes of avoided cost calculations.

19. Issues related to the utilities' proxy units in the avoided cost calculation. For example:
 - a. Are the assumptions regarding the capacity factors for combined cycle combustion turbines (CCCTs) reasonable?
 - b. Are the assumptions for the costs of CCCTs reasonable and consistent with other planning assumptions?
 - c. Should altitude of new resource locations be considered in developing avoided costs?
 - d. Are the interconnection costs assigned to the proxy plant that the utilities use to calculate their avoided costs reasonable?
20. Are the utilities' elements, conditions, computer model assumptions, and inputs underlying the avoided cost calculations reasonable?
21. If the Commission's decision in AR 495 allows, should standard contracts contain a waiver of claim to ownership of environmental attributes of delivered power as provided in § 8.1 of Idaho Power's contract?
22. Is it reasonable for PacifiCorp to correct for meter reading errors "either fast or slow" as specified in § 8.3 of the contract, instead of only "slow," given that PacifiCorp designs, furnishes, installs, owns, inspects, tests, maintains, and replaces all metering equipment as described in § 8.1? Should § 8.3 of PGE's contract be similarly modified?

Issues Related to PacifiCorp Only

23. **WITHDRAWN**
24. Is PacifiCorp's avoided cost filing consistent with its avoided cost filings in other jurisdictions?
25. Issues related to the application of the Revised Protocol.
26. **WITHDRAWN**
27. **WITHDRAWN**

Issues Related to PGE Only

28. Is the reference to § 1.3 in § 2.2.2 of PGE's contract a typographic error and, if so, what is the correct reference and is it appropriate?

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

Issues Related to Idaho Power Only

33. Is it reasonable for Idaho Power to require in § 3.3 that a hydroelectric Qualifying Facility warrant that it has a FERC license at the time of execution of the agreement, rather than warrant it will have a FERC license prior to the first operation date?
34. Is it reasonable for Idaho Power to seek to acquire rights of way and access to the Seller's facility for utility lines and easements totally unrelated to the facility (§ 13.2 through § 13.4)?

Track II Issues As They Relate to Standard Contracts

35. In the event of the inability of a QF to establish creditworthiness, determination of an appropriate amount of default security to be required.
36. Cap on amount of default losses that can be recouped, pursuant to future QF contract payment reductions.

APPENDIX B:

UM 1129 PHASE II ADOPTED ISSUES LIST

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

* Staff proposes to address issues 2 and 6 on the same schedule as the Phase I Compliance investigation. Therefore, staff did not include these items in its proposed consolidated list of issues for that investigation.

4. Further exploration of a Mechanical Availability Guarantee (MAG). For example, are avoided cost prices affected by a Mechanical Availability Guarantee?
5. Further exploration of market pricing options and alternatives to using nameplate capacity to determine the size of a QF project for standard contract eligibility purposes, including:
 - a. Should PacifiCorp offer a market pricing option?
 - b. Provide clear definition of “nameplate capacity” if that is retained as defining eligibility for standard contracts and avoided cost rates.
6. Cap on amount of default losses that can be recouped, pursuant to future QF contract payment reductions.
7. Liability insurance for QFs with a design capacity at or under 200 kW.
8. Negotiation parameters and guidelines for “simultaneous sale and purchase” QF contract.
9. Negotiating “net output sales” for non-standard contracts.
10. Further exploration of Staff’s role in the informal dispute resolution of QF contract disputes. Related to that issue, what is the role of the Commission in dispute resolution during contract negotiations and during the term of the power purchase agreement?
11. Should competitive bidding be used to set pricing for Qualifying Facilities greater than a certain size (e.g., larger than 100 MW) if the utility has recently completed an RFP, or a bidding process is in progress or imminent? If so, how?
12. Do provisions of the Energy Policy Act of 2005 affect the rules regarding new contracts with Qualifying Facilities? Specifically, should an Oregon electric company be required to enter into a new contract with a Qualifying Facility that is located in the service territory of an electric utility that has been relieved by FERC of a mandatory purchase obligation under PURPA?
13. Is it appropriate to consider the effect of debt imputation issues resulting from new accounting rules on avoided costs and if so, how?