

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UM 1129

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

DISPOSITION: INTERESTED PARTIES DIRECTED  
TO FILE ISSUE STATEMENTS

Hearing Memorandum

On February 2, 2006, a hearing was held in this docket in Salem, Oregon. The following parties appeared at the hearing: Rich George, Doug Kuns and Ted Drennan, on behalf of Portland General Electric Company (PGE); John Ericksson, on behalf of PacifiCorp; Lisa Rackner and Bart Kline, on behalf of Idaho Power Company (Idaho Power); Mike Weirich, on behalf of Staff of the Public Utility Commission of Oregon; Janet Prewitt, on behalf of the Oregon Department of Energy (ODOE); Peter Richardson, on behalf of Sherman County Court and J. R. Simplot Company (Sherman County and J. R. Simplot); Irion Sanger, on behalf of the Industrial Customers of Northwest Utilities; Linda K. Williams, on behalf of the Fair Rate Coalition; and Loyd F. Fery, on behalf of Loyd Fery Farms.

Due to the illness of a witness scheduled for cross-examination, Steve Chriss, the hearing was continued until February 8, 2006, at 1:30 p.m. At that time, parties scheduled to cross-examine Mr. Chriss, pursuant to the last-issued cross-examination schedule, may do so.

At the conclusion of cross-examination on February 2, 2006, parties agreed to a briefing schedule. All parties submitting post-hearing briefs will do so on March 20, 2006. There will only be one round of briefing.

## Ruling on Motion to Separate Issue No. 12

As part of its rebuttal testimony, PacifiCorp filed PPL Exhibits 400 and 401, testimony by Mr. Bruce Griswold and a proposed standard Qualifying Facility (QF) power purchase agreement (PPA) for off-system projects under 10 MW. On February 2, 2006, PacifiCorp also filed PPL 404, a redlined version of Exhibit 401, which indicates how the contract differs from PacifiCorp's primary standard contract for QFs under 10 MW. Sherman County and J. R. Simplot began cross-examination of Mr. Griswold on these exhibits, but indicated that cross-examination would likely be insufficient. Due to the timing of PacifiCorp's filing, Sherman County and J. R. Simplot anticipated a need to submit evidence regarding issues raised by PacifiCorp's filings. I indicated that evidence could not be introduced during post-hearing briefing. Consequently, I interrupted cross-examination of Mr. Griswold to address how his testimony, and future testimony by Sherman County and J. R. Simplot, should be addressed.

After parties conferred, a motion was made to move Issue No. 12<sup>1</sup> to the second track of this second phase of this docket.<sup>2</sup> The motion requested that direct testimony be due March 24, 2006, with rebuttal testimony due April 20, 2006. It was expected that cross-examination on the testimony filed on these dates would be conducted during the hearing for track two.<sup>3</sup> The motion anticipated that the Commission would be able to resolve all other issues in this initial compliance track of this second phase separately from resolution of Issue No. 12. Sherman County and J. R. Simplot requested, however, that the record in this track be left open and available for use to address Issue No. 12, in order to avoid duplication of cross-examination of Mr. Griswold. PGE indicated that it would likely file a proposed standard QF contract for off-system projects prior to direct testimony being due March 24, 2006. It was anticipated that a proposed standard QF contract for off-system projects filed initially, in response to Order No. 05-584, by Idaho Power would not need further testimony. The motion was taken under advisement.

After consideration of the motion, I have determined that it is premature to establish a procedure for addressing issues related to proposed standard contracts for off-system QFs. It is also unnecessary to move Issue No. 12 to another track. If PGE files a proposed standard contract for off-system QFs, Issue No. 12—which primarily asks whether the Commission should direct the utilities to file a standard contract for off-system QFs—will be moot. Regarding contracts for off-system QFs that either have been or will be filed, to the extent such contracts contain terms or conditions that address issues not fully considered by the Commission in Order No. 05-584, compliance with that order is not at issue.

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<sup>1</sup> Issue No. 12 asks: "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?"

<sup>2</sup> The first track of the second phase of this docket has been dedicated to addressing issues regarding compliance of QF standard contracts, as filed by the utilities, with Order No. 05-584. The second track will address issues unresolved by Order No. 05-584 for QFs ineligible for standard contracts.

<sup>3</sup> The hearing is currently scheduled for April 18 and 19, 2006. On February 6, 2006, ICNU filed a letter indicating that parties were interested in moving the hearing to May 2 and 3, 2006. This matter will be further addressed at the hearing on February 8, 2006.

I remind parties that the purpose of the first track of phase two of this docket is to address *compliance* of tariffs and standard QF contracts filed pursuant to Order No. 05-584, not *approval* of any filed standard contract. In the November 17, 2005 ruling, I stated, in pertinent part:

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. [Footnote omitted.] 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 absence of sufficient guidance from the parties regarding prioritization, the entire list, as modified by the parties' comments, and minus Issue No. 10, is adopted. [Footnote omitted.] . . .

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 yet 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 [footnote omitted], 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.

As this ruling held, the Commission can only address the compliance of proposed terms of a standard contract, or clarify the intent of Order No. 05-584, to the extent that the issue underlying the term or condition at issue was addressed in the first phase of this docket.

Proposed contracts for off-system QFs under 10 MW seem to necessarily contain terms and conditions that address issues not considered in the first phase of Docket No. UM 1129. To the extent this statement is true, it is inappropriate to consider such terms and conditions in context of a proceeding designed to resolve compliance with or clarification of Order No. 05-584, the final order resolving substantive matters in the first phase of Docket No. UM 1129. Consequently, the compliance of any proposed contract filed for off-system QFs under 10 MW can only be considered within the guidelines of Order No. 05-584. As a result of Issue No. 12 being raised, the Commission may direct parties to undertake further investigation of issues regarding power purchase agreements for off-system QFs under 10 MW. This position is consistent with the November 17, 2006, ruling, disallowing consideration of Issue No. 10.

Parties may, however, agree to address issues regarding power purchase agreements for off-system QF projects under 10 MW in the second track of the second phase of this docket; but, to do so, those issues must be fully identified, and approved as appropriate issues for the Commission to address, in terms of jurisdiction, among other things.<sup>4</sup> At this time, no such issues have been clearly identified.

If the parties intend to pursue this matter, they should work together to submit a proposed issues list, with regard to power purchase agreements for off-system QF projects under 10 MW, as quickly as possible, but no later than February 24, 2006. Ideally, PGE will also submit a proposed power purchase agreement for off-system QF projects under 10 MW before then.

Again, I remind parties that they should strongly consider negotiating their own QF contracts, and are free to use any standard contract filed by an electric company as a basis to negotiate a QF contract with modified terms, as appropriate, for a particular project. To the extent there is a dispute about the negotiation process, a complaint may be initiated.

Dated this 7<sup>th</sup> day of February, 2006, at Salem, Oregon.

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**Traci A. G. Kirkpatrick**  
Administrative Law Judge

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<sup>4</sup> For example, issues regarding transmission of off-system power may not be within the Commission's jurisdiction to resolve. Parties should fully consider the jurisdiction of the Commission to address an issue before proposing it, and should provide any justification necessary. Do you want to require them to cite our jurisdiction for any new issues?