IN THE MATTER OF PUBLIC UTILITY COMMISSION OF OREGON STAFF'S INVESTIGATION RELATING TO ELECTRIC UTILITY PURCHASES FROM QUALIFYING FACILITIES	))))))	CASE NO. UM 1129

REBUTTAL TESTIMONY

PHASE 1

Dr. Don Reading

on behalf of

Sherman County Court and
the J.R. Simplot Company

January 20, 2005

Q, Please state your name and occupation.

A. My name is Don Reading and I am employed by Sherman County as a consultant on community renewable energy. A copy of my qualifications were previously filed with my direct testimony.

Q. What is the purpose of your rebuttal testimony?

A. I will focus on the 'big picture' issues dealing with terms and conditions for QFs in Oregon as well as specific items found in the testimony of Staff witnesses Chriss and Galbraith. Specifically I address issues related to natural gas price forecasts and the appropriate avoided cost rates.

Q. What do you mean by 'big picture' issues?

A. In Order No. 05-584 in this Docket the Commission stated:

> This Commission's goal has been to encourage the economically efficient development of these qualifying facilities (QFs), while protecting ratepayers by ensuring that utilities pay rates equal to that which they would have incurred in lieu of purchasing QF power. [UM-1129, Order No. 05-584, p. 1]

This case is now two years old and Oregon has yet to sign up new QFs. Despite that fact, the utilities continue to acquire new resources. So far it does not appear that the Commission's goal has been accomplished.

Q. Is there a relationship between this Commission's actions and the ability of the QF industry to develop?

A. Yes.

Q. Please explain.

A. In my direct testimony, I outlined four periods dealing with QF activity in Idaho and demonstrated that the amount of QF activity is a direct result of the terms and conditions offered to QFs. Favorable terms and conditions must be mandated by this Commission or else the QF industry will simply not develop.

Q. Has the Oregon Commission been successful in implementing PURPA so far?

A. No. The Oregon Commission has made important steps toward achieving its goal of encouraging economically efficient QF development in the earlier phase of this docket. However, unless the Commission completes the process, all of our efforts to date will have been for naught. The Commission is at an important crossroads given the current phase of this Docket.

Q. Is the Commission correct to be concerned that the ratepayers might be disadvantaged if a utility pays a rate higher than its true avoided cost?

A. Yes. However setting avoided cost rates is a two edged sword for ratepayers. By setting rates lower than a utility's avoided cost, the Commission will thwart QF development; which is contrary to this Commission's laudable goals. In addition, with QF development thwarted, the utilities must rely on their own resources for which there is no guarantee that they are least cost.

Q. Why do you say that there is no guarantee that utility-owned resources are least cost?

A. The Commission approves (or disapproves) inclusion of a new utility-owned resources based on information available to it at the time the utility files for approval. Decisions are based on available knowledge at the time the utility files for rate treatment. In hindsight, such decisions may or may not prove to be good for the ratepayers.

Q. Is that, in fact, how this Commission approaches ratebase decisions?

A. Yes. For example, recently the Oregon Industrial Customers of Idaho Power urged this Commission to not allow Idaho Power to recover its investment in a very expensive gas fired plant. The Commission rejected the OICIP's argument although the plant was very expensive for the ratepayers. The Commission declared:

> As noted by the parties, we must review the company's decision to build Danskin for whether it was prudent or reasonable based on information that was available at the time the decision was made. Idaho Power's decision to build Danskin, made during a time of volatile electricity prices in 2001, was a prudent decision for the company to insulate itself from variable hydro supply and extreme market electricity prices. [UE-167, Order No. 05-871, p. 15]

The Commission is faced with similar ratemaking decisions in this docket as it determines the proper avoided cost rates for QFs. By setting QF rates based on the best current information, it will run the risk that the rates may be too low or too high at some point in the future. This is no different than when the Commission makes a decision to approve a utility-owned resource for ratemaking treatment.

Q. You were at the Idaho Commission when PURPA rates, terms, and conditions were set. Given your experience in this arena what comments do you have for the Oregon Commission?

A. In making a change in any policy direction it is likely some mistakes will be made. The impact on ratepayers can be just as great for setting QF rates too high as they are for setting QF rates too low. In order for the Commission to meet its stated goals it needs to use current information and use its judgment based on this information. Future conditions will change making past decisions look good or bad. The Commission can always come back and make adjustments once it sees that its goals are being met. This is the conclusion I reached in my direct testimony when I said,

> There is a correlation between price, contract term and contract conditions and the development of the QF industry. This Commission has the power to ramp the industry up, or slow it down, by simply making the price and contract terms more or less favorable. (Reading, Direct Testimony, UM1129, p. 8.)

The bottom line is that the Commission must use the best current information available to it in order to set rates going forward.

Q. What is your understanding of Staff witness Chriss' gas price testimony?

A. Mr. Chriss undertakes a technical analysis that compares, in real terms, natural gas prices in between April 2001 and March 2005 with the utilities' forecasts. He found the average real price in the forecast period to be 11.1% <u>lower</u> ($4.32 v $3.84) than the base period for PGE. In the case of PacifiCorp, the forecast real natural gas prices were found to be 17.8% <u>higher</u> ($3.93 v $4.63) in the future than for the base period. He concludes that PacifiCorp's forecast is reasonable while PGE's is not.

Q. Do you agree with his analysis and do you believe it is valid for use in establishing QF rates?

A. No, I do not agree with his analysis and I believe it is inappropriate for use in setting avoided cost rates.

Q. Why do you disagree with Mr. Chriss' analysis?

A. First, the base period is too short to support his conclusions. Even Mr. Chriss acknowledges this fact. Sufficient data is simply unavailable to in order to have confidence in his conclusions.

Q. You noted that the lack of data is the first problem you have with Mr. Chriss' analysis. Are there othe problems?

A. Yes. The second area of concern is even more critical than the lack of sufficient data. The type of comparative analysis used by Mr. Chriss is only valid when market parameters are comparable between the base period and the forecast period. Implicit in the analysis is that the natural gas and energy situation for April 2001 through March 2005 (the base period) is essentially the same as the forecast periods which are 2010-2028 for PacifiCorp, and 2009-2020 for PGE. .

Q. Are the base period and the forecast period comparable?

A. No, they are not. Recent price instability makes comparisons to the future questionable. In addition, other witness in this case attest to recent significant changes in the market structure for energy and natural gas. These changes in the nature of natural gas markets invalidate meaningful comparisons of simple real average price differences between the two periods used by Mr. Chriss.

Q. Are there other problems with Mr. Chriss' analysis?

A. Yes. He also did not undertake an analysis of the sufficiency period for either PGE or PacifiCorp.

Q. What is the significance of the failure to analyze the sufficiency period?

A. As shown in my direct testimony, as well as in the testimony of others, future market prices for natural gas are significantly higher than those in the base period. Since there is an obvious relationship between electric and natural gas prices, and because Mid-C prices are used for the sufficiency period QF rate setting, I can only conclude that rates for <u>both natural gas and electricity</u> will be higher than those filed by the utilities over the next 5 years. Which, of course, is the time period in which PGE and PacifiCorp claim to be resource sufficient.

Q. Didn't Mr. Chriss acknowledge the dynamic nature of future natural gas markets?

A. Yes. He stated:

> The forecast provides a conservative long term appraisal of where natural gas prices may or may not be headed. When comparing a price current as of the time of filing to a future price, the forecast seems fairly realistic. Events in late 2005, such as Hurricanes Katrina

and Rita, showed that the United States' natural gas market is susceptible to large shocks. However, we do not yet know if these shocks will result in a large sustained price increase over time. [Chriss Testimony, UM1129, p. 21.]

As pointed out in my direct testimony, the best measure of near-term prices for natural gas is the NYMEX futures market. Exhibit Reading-REB-1 shows the movement of future natural gas prices on the NYMEX since I filed my direct testimony in December.

Q. What does Ex. Reading-REB-1 show?

It indicates a lowering of near term prices and an increase for the period 2009 through 2011. This flatting of the futures curve indicates the market is coming to terms with the impact of the hurricanes as well as the current supply and demand situation. It also shows prices over the next five years do not drop below $7.56/MMBtu.

Q. Is it important to use the most accurate estimate of natural gas prices available?

A. Yes. Staff acknowledges this fact. Mr. Chriss states:

Utility customers would benefit under a particularly low forecast, but it is important to remember that low or high, avoided cost rates need to be calculated correctly and accurately represent the cost being avoided. [Chriss Testimony, UM1129, p. 15.]

If one believes in the goals of both this Commission and PURPA, that is that QF development is beneficial and should be encouraged, then Mr. Chriss is simply wrong. Artificially low avoided cost rates do not benefit ratepayers.

Q. Please explain.

A. If the gas forecast is so low that avoided cost rates are uneconomic, then no QF projects will come on line. It should be remembered when a QF signs a contract the avoided cost rates in that contract are typically locked in (or between the bands if that is the option selected) over the life of the contract. Utilities, on the other hand, are free to seek rate increases when their variable (gas) costs are higher than projected. In other words, the utility has the option of coming before the Commission for rate changes based on its costs of production.

Q. What is the significance of this "locked-in" feature in avoided cost contracts?

A. In an era of increasing energy prices, fixed QF contract rates would be a significant advantage for ratepayers relative to utility-owned resources that are impacted by rising costs that are passed on to the consumers as higher rates.

Q. Do you have any observations relative to Mr. Galbriath's testimony?

A. Yes. He recommends a defective methodology for defining the sufficiency period for PGE and PacifiCorp.

Q. What does Mr. Galbriath recommend?

A. He testifies that the sufficiency period ends when a utility is projected to experience significant deficits in both capacity and energy on an annual basis. According to Mr. Galbriath:

> Pursuant to the methodology adopted by the Commission in Order 05-584, PacifiCorp and PGE are to use a natural gas-fired CCCT as a proxy for the avoided resource in the period of resource deficiency. *See* Order No. 05-584 at 27. Since a natural gas-fired CCCT is considered to be a base load resource, it is appropriate to determine the resource sufficiency period on both an annual energy and capacity basis. In other words, a utility is

> unlikely to acquire a base load resource unless it forecasts a significant annual energy and capacity deficit. In other words, a utility is unlikely to acquire a base load resource unless it forecasts a significant annual energy and capacity deficit.[Galbriath at p. 4]

He uses the significant deficit in both energy and capacity for determining the first deficit year based on the fact that the Commission selected a base load unit for the proxy during periods of deficiency.

Q. Do you agree?

A. No. I read the Commission's order differently. The Commission's decision is based on the deferral or avoidance of a planned resource. Specifically the Commission ruled:

> The calculation of avoided costs when a utility is in a resource deficient position should reflect longer term resource decisions that are subject to deferral or avoidance due to QF power purchases. Although a utility may acquire market resources as demand gradually builds, at some point the increase in demand warrants the utility making plans to build or acquire long-term generation resources. At that point, calculation of avoided costs should reflect the potential deferral or avoidance of such generation resources. [Order 05-584, UM1129, p. 27.]

It is clear that the Commission is focusing on when a utility makes "plans to build or acquire" long-term resources, rather than on the type of resource being acquired. When a utility's planned resource can be avoided or deferred is when the resource deficiency period should begin. As I testified to in my direct testimony, both PGE and PacifiCorp are currently acquiring resources.

Mr. Galbriath's approach misses the mark by looking at the utilities' estimates of significant shortfall of both capacity and energy and not at the fact that the utilities are currently acquiring resources that can be deferred.

Q. What approach should the commission use in defining a sufficiency period?

A. In my direct testimony I offered evidence demonstrating that a sufficiency period should not be used in calculating avoided cost rates. However, if a sufficiency period is used, I would agree with ICNU's witness Falkenberg. He argues the sufficiency methodology needs to be simpler. As I noted in my direct testimony, the Idaho Commission struggled with this issue and finally decided to eliminate it for use in calculating avoided cost rates. If this Commission still wants to use a sufficiency period it should end the moment a utility begins the process of actively acquiring a new resource – which for PGE and PacifiCorp is now. As an alternative I would accept the methodology used by Mr. Falkenberg.

Q. Based on updated natural gas futures prices at the NYMEX what are the accurate avoided cost rates as of today?

A. QF rates based on NYMEX gas futures prices for January 18, 2006 are shown in my Exhibit Reading-REB-2.

Q. How did you determine the accurate avoided cost rates in your Exhibit Reading-REB-2?

A. I used the same methodology described in my direct testimony only I substituted the current NYMEX prices. The one difference is that I reduced the Henry Hub prices specifically for the natural gas hunbs of Sumas, Opal, and AECO. The amount of adjustments are those recommended by ODOE witness Carver of $0.69 for Sumas, $0.94 for Opal, and $0.78 for AECO.

Q. Do you have any observations as to these new rates?

A. Yes. The current futures prices reflect the lower near term prices and higher long term prices (post 2009).

Q. In your opinion, what explains the lower near term prices and higher long term prices?

A. These pricing trends are a result of the flattening of the future natural gas prices over the past six weeks. While the near term prices are lower, they are still significantly higher than the unrealistic prices filed by the utilities based on their outdated natural gas price projections.

Q. Can you summarize your rebuttal testimony?

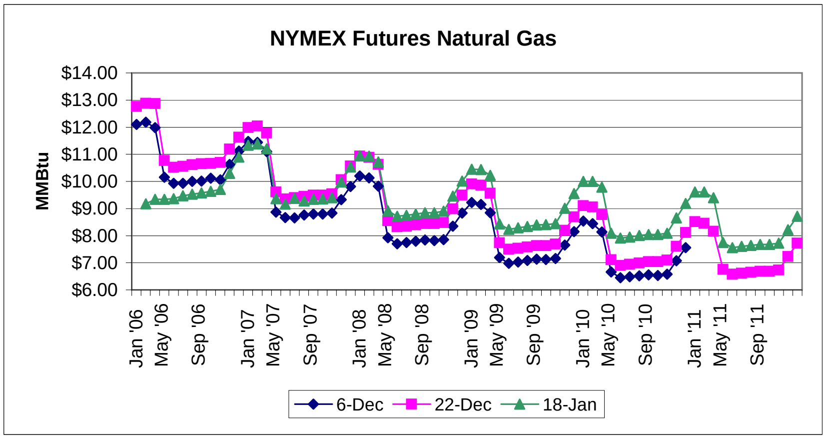
A. Yes. The Commission should eliminate, or at a minimum simplify, the definition of sufficiency period. The utilities should be required to resubmit their compliance filings with updated gas prices based on current gas prices using the forward gas market prices. Failing to do these things will frustrate the Commission's goal of encouraging the development of QFs in Oregon while at the same time ensuring that the ratepayers, the utilities and QFs receive equitable treatment.

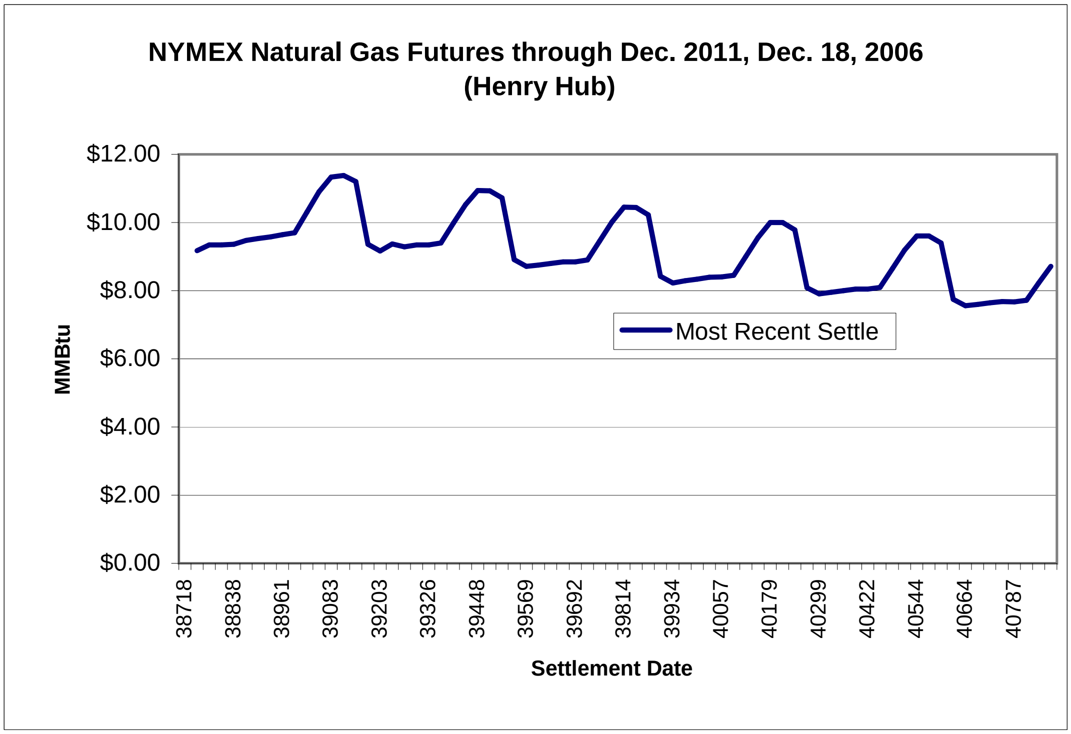
Q. Does this conclude your testimony?

A. Yes, it does.

Natural Gas Comp. - NYMEX

Month	18-Jan	22-Dec	6-Dec
	Date of Futures Prices		
Jan '06		12.76	12.100
Feb '06	9.170	12.874	12.180
Mar '06	9.340	12.87	11.980
Apr '06	9.340	10.77	10.150
May '06	9.360	10.523	9.930
Jun '06	9.470	10.555	9.930
Jul '06	9.530	10.612	10.000
Aug '06	9.580	10.65	10.014
Sep '06	9.640	10.657	10.119
Oct '06	9.700	10.693	10.064
Nov '06	10.300	11.188	10.620
Dec '06	10.900	11.634	11.117
Jan '07	11.330	11.98	11.470
Feb '07	11.380	12.041	11.437
Mar '07	11.200	11.776	11.100
Apr '07	9.362	9.606	8.872
May '07	9.162	9.356	8.672
Jun '07	9.370	9.401	8.650
Jul '07	9.282	9.441	8.757
Aug '07	9.342	9.491	8.797
Sep '07	9.347	9.494	8.792
Oct '07	9.402	9.544	8.837
Nov '07	9.980	10.054	9.332
Dec '07	10.527	10.564	9.817
Jan '08	10.942	10.934	10.197
Feb '08	10.927	10.889	10.127
Mar '08	10.720	10.624	9.822
Apr '08	8.912	8.554	7.922
May '08	8.712	8.319	7.702
Jun '08	8.752	8.35	7.752
Jul '08	8.802	8.399	7.797
Aug '08	8.842	8.439	7.837
Sep '08	8.847	8.439	7.817
Oct '08	8.900	8.479	7.857
Nov '08	9.452	8.984	8.344
Dec '08	10.007	9.489	8.830
Jan '09	10.447	9.904	9.217
Feb '09	10.437	9.859	9.147
Mar '09	10.227	9.564	8.847
Apr '09	8.427	7.734	7.197
May '09	8.227	7.499	6.982
Jun '09	8.287	7.539	7.032
Jul '09	8.342	7.584	7.082
Aug '09	8.392	7.629	7.132
Sep '09	8.402	7.634	7.122
Oct '09	8.447	7.684	7.158
Nov '09	9.007	8.189	7.653
Dec '09	9.557	8.694	8.143
Jan '10	9.997	9.109	8.538
Feb '10	9.997	9.059	8.448
Mar '10	9.787	8.769	8.138
Apr '10	8.087	7.109	6.663
May '10	7.907	6.899	6.453
Jun '10	7.952	6.944	6.483
Jul '10	8.002	6.994	6.518
Aug '10	8.047	7.044	6.553
Sep '10	8.044	7.039	6.533
Oct '10	8.094	7.094	6.578
Nov '10	8.649	7.604	7.073
Dec '10	9.189	8.109	7.563
Jan '11	9.609	8.509	
Feb '11	9.609	8.449	
Mar '11	9.399	8.159	
Apr '11	7.749	6.759	
May '11	7.559	6.584	
Jun '11	7.599	6.619	
Jul '11	7.639	6.654	
Aug '11	7.679	6.689	
Sep '11	7.676	6.684	
Oct '11	7.721	6.729	
Nov '11	8.221	7.229	
Dec '11	8.716	7.724	



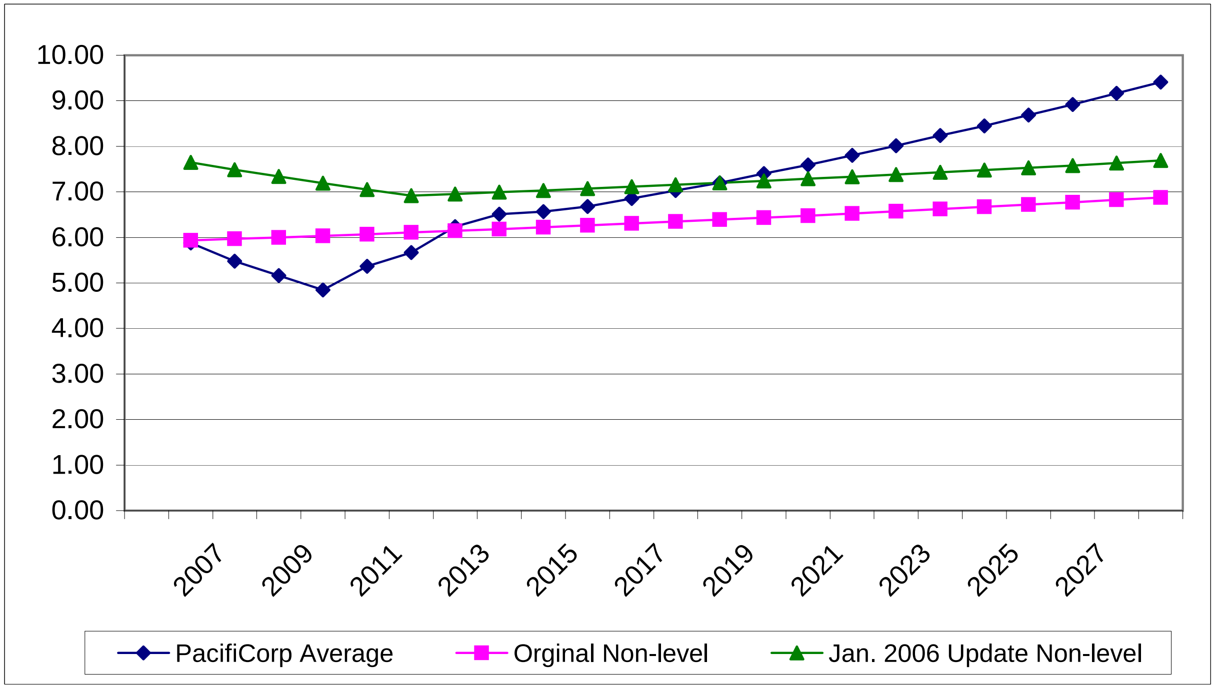


NYMEX Natural Gas Futures through Dec. 2011, Dec. 18, 2006 (Henry Hub)

		0.69	0.94	0.78	
	Annual Average	Annual Average Sumas	Annual Average Opal	Annual Average AECO Hub	Annual Average AECO & Sumas
2006	9.67	8.98	8.73	8.89	8.93
2007	9.97	9.28	9.03	9.19	9.24
2008	9.48	8.79	8.54	8.70	8.75
2009	9.02	8.33	8.08	8.24	8.28
2010	8.65	7.96	7.71	7.87	7.91
2011	8.26	7.57	7.32	7.48	7.53

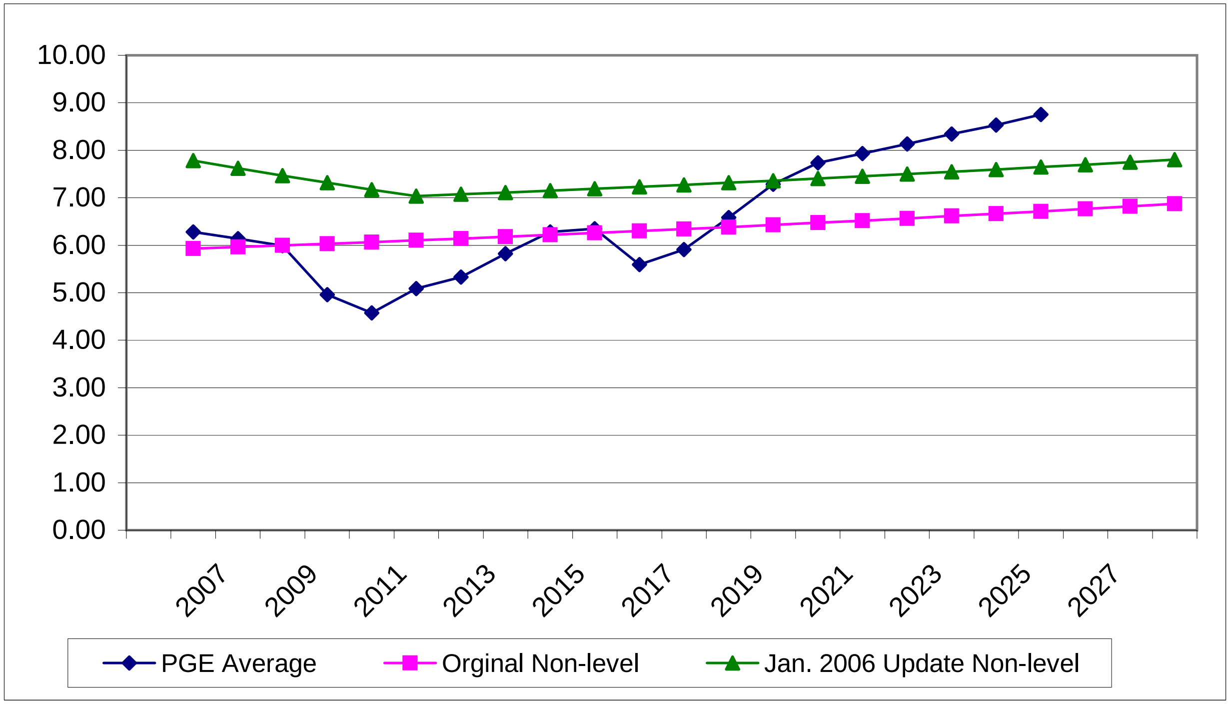
Year	PacifiCorp Average	Orginal Non-level	Jan. 2006 Update Non-level
2006	5.88	5.93	7.65
2007	5.48	5.97	7.49
2008	5.16	6.00	7.34
2009	4.85	6.04	7.19
2010	5.36	6.07	7.05
2011	5.67	6.11	6.92
2012	6.23	6.14	6.96
2013	6.51	6.18	6.99
2014	6.57	6.22	7.03
2015	6.68	6.26	7.07
2016	6.85	6.30	7.11
2017	7.03	6.35	7.16
2018	7.20	6.39	7.20
2019	7.40	6.43	7.24
2020	7.59	6.48	7.29
2021	7.80	6.52	7.33
2022	8.01	6.57	7.38
2023	8.23	6.62	7.43
2024	8.45	6.67	7.48
2025	8.69	6.72	7.53
2026	8.92	6.77	7.58
2027	9.16	6.82	7.63
2028	9.41	6.88	7.69

PACIFICORP



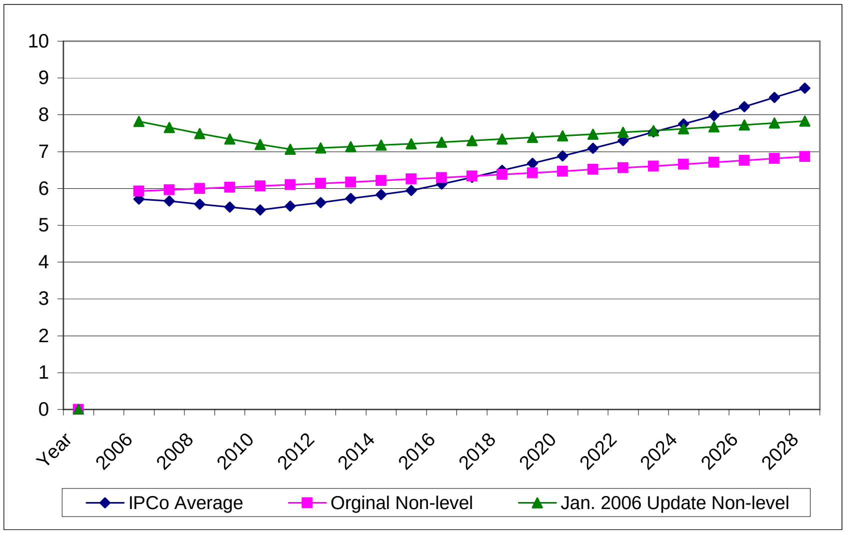
Year	PGE Average	Orginal Non-level	Jan. 2006 Update Non-level
2006	6.28	5.93	7.78
2007	6.14	5.96	7.62
2008	5.99	6.00	7.47
2009	4.96	6.03	7.32
2010	4.58	6.07	7.17
2011	5.09	6.10	7.04
2012	5.33	6.14	7.07
2013	5.83	6.18	7.11
2014	6.28	6.22	7.15
2015	6.35	6.26	7.19
2016	5.59	6.30	7.23
2017	5.91	6.34	7.27
2018	6.59	6.38	7.32
2019	7.28	6.43	7.36
2020	7.73	6.47	7.40
2021	7.93	6.52	7.45
2022	8.13	6.57	7.50
2023	8.34	6.61	7.55
2024	8.53	6.66	7.59
2025	8.75	6.71	7.65
2026		6.77	7.70
2027		6.82	7.75
2028		6.87	7.80

PGE



Year	IPCo Average	Orginal Non-level	Jan. 2006 Update Non-level
2006	5.71	5.93	7.82
2007	5.66	5.96	7.65
2008	5.57	5.99	7.50
2009	5.49	6.03	7.34
2010	5.41	6.06	7.20
2011	5.52	6.10	7.06
2012	5.62	6.14	7.10
2013	5.73	6.18	7.14
2014	5.83	6.22	7.18
2015	5.94	6.25	7.22
2016	6.12	6.30	7.26
2017	6.30	6.34	7.30
2018	6.50	6.38	7.34
2019	6.69	6.42	7.39
2020	6.89	6.47	7.43
2021	7.09	6.51	7.48
2022	7.30	6.56	7.52
2023	7.53	6.61	7.57
2024	7.76	6.66	7.62
2025	7.98	6.71	7.67
2026	8.22	6.76	7.72
2027	8.47	6.81	7.78
2028	8.72	6.87	7.83

IDAHO POWER



IN THE MATTER OF PUBLIC UTILITY COMMISSION OF OREGON STAFF'S INVESTIGATION RELATING TO ELECTRIC UTILITY PURCHASES FROM QUALIFYING FACILITIES))))))

CASE NO. UM 1129

REBUTTAL TESTIMONY

PHASE 1

Paul Woodin

on behalf of

Sherman County Court and
the J.R. Simplot Company

January 20, 2005

Q, Please state your name and occupation.

A. My name is Paul Woodin and I am employed by Sherman County as a consultant on community renewable energy. A copy of my bio was previously filed with my direct testimony as Sherman/Simplot Exhibit No. 103.

Q. What is the purpose of your rebuttal testimony?

A. I will respond to the portions of the direct testimony of the other parties as they relate to contract terms and conditions. Dr. Reading will address issues related to natural gas price forecasts and the appropriate avoided cost rates.

Q. How is your testimony organized?

A. I will address issues as they appear in the testimony of the other parties.

Q. Do you have any overriding concerns you would like to bring to the attention of the Commission?

A. Yes.

Q. Please proceed.

A. Frankly, we want to underscore the fact that unless we have contract terms that a developer can, quite literally, ‘take to the bank,’ Oregon will not enjoy a robust QF industry. My rebuttal testimony should be read in that light. We are not attempting to overreach, we are simply attempting to help this Commission implement the Federal policy of encouraging the development of a QF industry. This is not the time for timidity. For example, Despite recent near record rainfall in the Pacific Northwest, Mid-C prices have not moved down nearly as much as one would have expected. It is critical to the economic and environmental health of our region to develop our renewable and combined heat and power resource potential now, before it is too late.

Q. Do you have any response to Staff's testimony in this matter?

A. Yes. I would like to first address Staff's comments on the creditworthiness issue. Staff witness Schwartz takes a very broad reading of the Commission's order on creditworthiness. At page 7, beginning on line 15, Ms. Schwartz states that, "the use of the term 'including' in the quotation above allows the utilities to require additional documentation to establish that the QF has good credit…" She is citing the Commission Order No. 05-584 in which the Commission declared at page 45 that:

> QFs should be required to establish creditworthiness by making a set of representations and warranties that the QF has good credit, including that it is current on existing debt obligations and has not been a debtor in a bankruptcy proceeding within the preceding two years.

According to Ms. Schwartz, the use of the word "including" gives the utilities carte blanche to demand any indicia of creditworthiness as long as that demand is "reasonable." Unfortunately "reasonable" is in the eye of the beholder. As noted by Idaho Power, and observed by Ms. Schwartz, most QF developers form new single purpose legal entities to facilitate project financing. It is not possible to require more from such an entity. But more to the point, allowing the utilities flexibility in devising their own creditworthy standards outside of the scope of this proceeding seems to defeat the very purpose of having this proceeding. QF developers need to know, up front, what will be required of them and the utilities need guidance from the Commission as to what they are allowed to require of QF developers.

I would like to point out that once a lender or investor has been satisfied as to the creditworthiness of the developer the utility should also be satisfied. This is because the lender and/or investor assumes almost all of the risk of a QF's default. This is especially true when the utility claims to be in a surplus period. For the utility to place more stringent creditworthiness criteria than the lender and or investor do is inappropriate. They don't carry the risk that the lender or investor do.

Q. Do you have any comments on Staff's acceptance of PGE's contract provision that requires default security in the event a QF is not current on its obligations to third parties?

A. Yes. Not being current on an obligation to a third party may or may not be an indication of lack of creditworthiness. It may also be an indication of prudent business practices in the event the obligation to the third party is under dispute. If it is an indication of credit problems, then placing additional financial obligations on the QF does not seem like a rational response since the primary source of income for most QF LLCs are sales of QF power to the utility. It is not reasonable to allow the utilities to impose additional security requirements unless the QF is not current on its obligations to the utility.

Q. What is your response to Staff's acquiescence to PafifiCorp's creditworthiness requirements?

A. I do not understand how Staff can accept, as reasonable, PacifiCorp's requirement that QFs larger than 3 MW must meet stricter creditworthiness requirements than the two representations required in Order No. 05-584. The Commission's order, on Page 45, clearly states that creditworthiness may be established by making the two representations that the QF is current on its financial obligations and has not recently been bankrupt. But that is not my only concern.

Q. What are your other concerns?

A. Staff concludes its discussion of PacifiCorp's creditworthiness requirements with the following statement:

> The utilities must be able to use other documentation and methods to determine a QFs creditworthiness if *they find that* the minimum warranties and representations are insufficient and if the QF does not have a long-term rating by a major credit rating agency.
>
> Staff/1 1000/10 (Schwartz) Emphasis provided.

Staff seems content to let the utilities make creditworthiness determinations with virtually no sideboards and completely outside of the guidance provided by the Commission. For example, what standards will the utilities use to "find that the minimum warranties and representations are insufficient"? Remember we are not talking about an every day commercial transaction between a wholesale electric trader and the utility. QFs enjoy a special status conferred upon them by Federal law. QFs are not supposed to be treated like a typical counterparty in an everyday commercial transaction. Let us not lose focus of the fact that we are implementing a Federal law that mandates the State PUCs to implement PURPA such a way as to ENCOURAGE the development of QF projects.

Q. What is your response to Staff's position on Issue No. 5 a.i. relative to Idaho Power's security requirements?

A. Idaho Power's contract uses the phrase "at a minimum" when referring to the type of documentation it will require from a potential QF to demonstrate creditworthiness. The language in question is found at Section 4.1.6 of the Idaho Power contract:

> Provide Idaho Power with commercially reasonable representations and warranties and other documentation to determine the Seller's creditworthiness. Such documentation would include, at a minimum, that the Seller is current on existing debt obligations and has not been a debtor in a bankruptcy preceding (sic) within the preceding two years.

My reading of the Commission's order at page 45 is quite the opposite. The representations are the maximum that a utility may demand of a potential QF. If the Commission felt that these representations were the minimal requirement they would have said so.

Q. What is your response to Staff's position on default security?

A. We were surprised that Staff acquiesced to the utilities once again. The Commission Order addresses default security at page 45:

> Although default security provided for in the form of a letter of credit or escrow deposit provides immediate recovery of costs incurred due to a QF's default, we are persuaded that terms providing for future recovery over the course of a long term contract are reasonable. Consequently we adopt Staff's recommendation that standard contracts include a clause providing that, in the event that a QF defaults and the market prices to replace the contracted for energy exceed the contract price, future payments after the default period ends shall be commensurately reduced over a reasonable period of time to recoup the costs incurred by the utilities.

As I read the Commission's Order, default security is limited to recoupment of costs incurred by the utilities from future payments to the QF over a reasonable period of time. The Commission did not provide for the posting of a letter of credit or cash escrow by QFs that are creditworthy. In fact, it appears from the above passage that the Commission actively considered and rejected such devices which is evidenced by the first half of the first sentence in the above passage. We also believe such a requirement is unnecessary.

Q. What security should a Creditworthy QF be required to provide?

A. As noted in my direct testimony, a creditworthy QF should only be required to provide the following security measures; (1) adequate insurance; (2) O & M certification by an engineer; (3) construction certification by an engineer; and (4) motive force secured for the life of the contract. If a creditworthy QF can provide these four security measures, it should not also be required to provide any financial security.

Q. What concerns do you have relative to Staff's position on default security?

A. We agree that a non-creditworthy QF should be subject to reasonable default security provisions discussed in Staff's testimony. However, we are very concerned that it appears that the Staff would leave the definition of the term "creditworthiness" to the utilities. This is unacceptable because it is unknown what the utilities may or may not require.

Q. Do you have any comments on Staff's position on minimum delivery commitments?

A. Yes, we agree with Staff that the annual minimum delivery commitments are a reasonable approach to this issue.

Q. What is your position on the delay default issue?

A. Staff's position on this issue is reasonable. That is, if the utility is resource surplus, then a QF's delay in coming on-line should not be an event of default and no penalties should be imposed. But this issue implicates another, more important question, and at the same time exposes a major inconsistency in the way rates are set.

Q. Please explain.

A. PGE and PacifiCorp claim to be surplus for purposes of setting rates. If that is true, then failure of a QF to come on line is, by definition, not an event of default, because the utility doesn't need new sources of power during surplus periods. Yet the utilities are attempting to impose penalties against QFs for a delay in meeting contracted for on-line dates during times of surplus. That is inconsistent. In my direct testimony I talked at length about the need to eliminate resource surplus calculations when setting rates. Here the utilities are playing a head-I-win and a tails-you-lose game. They claim to be resource sufficient when setting rates while at the same time claim to be harmed when a QF doesn't come on line during the surplus period. We would be willing to accept some delay penalties <u>if</u> the rates were set without a surplus period included in the rates.

Q. Do you have any comments on Staff's opportunity to cure position?

A. Yes. Staff finds that PacifiCorp's and Idaho Power's opportunity to cure provisions are both reasonable. Yet those two opportunity-to-cure provisions are completely inconsistent with each other. It is difficult to believe that two such disparate approaches can both be reasonable at the same time.

Q. Please explain.

A. Idaho Power's approach allows the QF to cure over a commercially reasonable time. PacifiCorp gives the QF 120 days to cure - irrespective of whether 120 days is reasonable. If a defaulting QF needed 121 days to cure its default, it would be terminated according to PacifiCorp's contract. On the other hand if a QF only needed, say, 7 days to cure but was negligent and waited until day 100 to cure, under Idaho Power's contract that QF could be terminated. The Idaho Power approach simply makes sense, while PacifiCorp's hard and fast deadline has nothing whatsoever to do with what is actually happening on the ground. We urge the Commission to reject PacifiCorp's hard-wired deadline approach to cure and adopt Idaho Power's more thoughtful and reasoned approach for all three utilities.

Q. Do you have any comments on Staff's position on default for under deliveries?

A. Yes, Staff believes that a QF that under-delivers during time of surplus should be penalized. Yet they do not believe that a QF's failure to meet its on-line date during a time of surplus is an event of default. This is inconsistent. If non-deliveries during surplus periods are not an event of default, then under-deliveries during times of surplus should likewise not be an event of default. We believe that under-deliveries during times of surplus do not harm the utility and hence QFs should not be penalized for such under-deliveries. This concept should also apply to the measurement of damages in the event of default.

Q. Isn't it true that once a QF is on line that a utility may reasonably plan for that QF's output and hence it is damaged by under-deliveries?

A. That may or may not be true. However, this issue also highlights the inconsistency of setting avoided cost rates using a surplus period to discount those rates, because the utility ostensibly doesn't need power, while at the same time asserting the utility needs the QF's power and is damaged by the QF's under-delivery during time of surplus. I believe this issue should be analyized using the same logic I applied to the inconsistency of setting rates using a surplus period while at the same time asserting that the utility is damaged by a QF's missing its contracted for on-line date during times of surplus.

Q. Is there a solution to this quandary?

A. Yes. The Commission should not use surplus periods to reduce the published avoided cost rates for any utility that is planning on acquisition of new resources. By that standard all the surplus period should be removed from the avoided cost calculation for all three utilities.

R. Do you have any comments on Staff's position on Force Majeure?

A. Yes, Staff's opposition to including lack of wind or water as events of force majeure simply puts form over substance. Staff's MAG discussion makes it clear that they do not believe that the lack of wind or water should be used to penalize the QF. Making the lack of wind or water an event of force majeure is a simple way of fixing the problem. We urge the Commission to so define force majeure so that all parties are clear on this point.

Staff accepts the utilities' assertion that "force majeure events are <u>limited to those that</u> neither party could have anticipated." Staff/1 1000/55 – emphasis provided. However, that is simply not true. For example, look at Idaho Power's force majeure clause:

> "Force Majeure" or an "event of Force Majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such party is unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation occurring after the Operation Date, which, by the exercise of reasonable foresight could not reasonably have been expected to avoid and by the exercise of due diligence, is shall be unable to overcome.

If an event of force majeure were "limited" to events that "neither party could have anticipated" then none of the events listed above (flood, fire, storms, lightning, etc.) could be an event of force majeure. I think we can all agree such a result would be absurd. Also contrary to Staff's assertion, events such as floods, storms, and lightning can be modeled and are, in fact, anticipated. But because they are "*beyond the control*" of either party they constitute an event of force majeure. If a flood (too much water) constitutes an event of force majeur, then certainly a drought (too little water) also constitutes an event of force majeure. Both can be anticipated, both can be modeled, and both are beyond the control of the parties. Similarly, if a storm (too much wind) is an event of force majeure then a wind drought (too little wind) should also be an event of force majeure. Both can be anticipated, both can be modeled and, most importantly, both are beyond the control of either party.

Q. Do you have any comments on Staff's position on third-party wheeling provisions?

A. Yes. I believe the Staff understands the issue with QFs who wheel their power over third party systems. In Oregon, this situation will likely take place most often when a QF uses the Bonneville Power Administration's system to wheel to PacifiCorp or to PGE. Staff correctly notes that the wheeling utility only schedules in whole megawatt increments such that a 4.5 MW QF will schedule 5 MW for half the time and 4 MW for half the time and at the end of the day will have delivered 4.5 MW and no more. Staff described the 1/2 MW delivered over and above the 4.5 produced as “excess energy”. Staff/1 1000/68. Staff recommended that the utilities’ accept and pay full avoided cost rates for such excess energy.

While the “excess” power delivered is technically “excess,” it is actually an ancillary service the QF purchases from the wheeling utility. It, along with the under deliveries, are purchased from the wheeling utility and then trued-up at the end of the month such that the QF never carries a positive or negative balance with the wheeling utility for more than one month. Our experience is that when BPA wheels for a QF it balances the deliveries on a monthly basis. Also I should point out that all of interconnection issues between the QF and the wheeling utility are controlled by the wheeling utility’s open access transmission tariff. So none of the metering and other interconnection issues being addressed in this docket would apply to a QF that wheels on a third party’s transmission system.

Q. Does this conclude your testimony?

A. Yes.