



1 PacifiCorp’s so-called “facts” are not facts at all, but rather constitute legal conclusions.<sup>3</sup> Staff  
2 did not rely upon these non-factual statements in reaching its legal conclusions presented here.

3 Further, where PacifiCorp properly sets forth facts, staff did not independently verify  
4 their veracity. As such, staff’s legal conclusions and recommendations are based upon an  
5 assumption that the facts are as PacifiCorp represents. To the extent the facts change as this  
6 docket proceeds, staff reserves the right to modify its legal conclusions as appropriate and  
7 necessary.

8 **3. Summary of Answers to Questions Presented**

9 **A. Is PURPA violated if Pacific Power is required to pay Schedule 37 prices  
10 and:**

11 **(i) Pacific Power must also pay for third-party transmission to move  
12 Qualifying Facility (QF) output from the point of delivery to PacificCorp  
load?**

13 **Short Answer:** Yes, except in situations where there are offsetting savings [discussed in  
14 answer to Questions (ii) and (iii)]. PURPA’s avoided cost formula prohibits requiring a utility to  
15 pay more than its “full avoided costs” for QF output. Full avoided costs should not include third-  
16 party transmission costs incurred to move QF output from the point of delivery to PacifiCorp’s  
17 load.

18 **(ii) Pacific Power must also pay for third-party transmission to move QF  
19 output from the point of delivery to PacifiCorp; and the cost to purchase  
20 third-party transmission service to move qualifying facility output to Pacific  
Power load is not, in aggregate, offset by savings in third-party transmission  
service costs created by other Schedule 37 Qualifying Facilities?**

21 **Short Answer:** Yes, for the reason stated immediately above and because the lawfulness  
22 of the standard “full avoided cost” rate is reviewed on a systematic (i.e. aggregate) basis. On a  
23 different but related matter, staff recommends that, for each individual QF, PacifiCorp should

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26 <sup>3</sup> For example, Material Fact No. 3 is a legal conclusion, not a fact.

1 impose the additional transmission charges on a case-by-case basis and net them against any  
2 offsetting transmission savings.

3 **(iii) Pacific Power must also pay for third-party transmission to move QF**  
4 **output from the point of delivery to PacifiCorp; and the cost to purchase**  
5 **third-party transmission service to move qualifying facility output to Pacific**  
6 **Power load is, in aggregate, offset by savings in third-party transmission**  
7 **service costs created by other Schedule 37 Qualifying Facilities?**

8 **Short Answer:** No, for the same reason as provided in the answer to Question (ii)  
9 immediately above. Staff also makes the same netting of costs and savings recommendation as  
10 set forth in the answer to Question (ii).

#### 11 4. Argument

##### 12 A. Pertinent PURPA Background

13 In its Order No. 05-584 (UM 1129), the Commission sets forth a thorough summary of  
14 PURPA's creation at the federal level and the application of the law in Oregon. Staff will not  
15 duplicate this discussion here other than to briefly recite the most pertinent points. For the  
16 complete discussion, refer to Order No. 05-584 at pages 6-10.

17 PURPA was enacted to encourage the development of cogeneration and renewable  
18 energy technologies by non-utility power producers known as "qualifying facilities" (QFs).  
19 Under PURPA, the Federal Energy Regulatory Commission (FERC) promulgated rules that  
20 require electric utilities to purchase energy from QFs. PURPA further decrees that a utility may  
21 not pay a QF more than "the incremental cost to the electric utility of alternative electric energy"  
22 for its energy output. 16 U.S.C. § 824a-3(b). "Incremental cost" in this context means "the cost  
23 to the electric utility of the electric energy which, but for the purchases from such [QF], such  
24 utility would generate or purchase from another source." 16 U.S.C. § 824a-3(d). FERC has set  
25 forth the factors, and other considerations, for determining avoided costs in 18 C.F.R. § 292.304.

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1 The Commission's rules for implementing its version of PURPA, promulgated pursuant  
2 to ORS 758.505 through 758.555, are consistent with federal PURPA law. "Avoided costs" are  
3 defined as:

4 the electric utility's incremental costs of *electric energy or capacity or both*  
5 which, but for the purchase from the qualifying facility or qualifying  
6 facilities, the electric utility would generate for itself or purchase from  
another source and shall include any costs of interconnection of such  
resource to the system.

7 OAR 860-029-0010(1) (emphasis added).

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9 Like FERC, the Commission has also adopted factors for determining avoided costs. See OAR  
10 860-029-0040(5).

11 Importantly, QF payment rates calculated under the PURPA avoided cost pricing criteria  
12 represent the maximum payment rate allowed by law. See *American Paper Institute v. American*  
13 *Electric Power*, 461 U.S. 402, 413 (1983). Thus, the primary principle underlying PURPA's full  
14 avoided cost QF payment scheme is, as the Ninth Circuit Court of Appeals has concluded, "[i]f  
15 purchase rates are set at the utility's avoided cost, consumers are not forced to subsidize QFs  
16 because they are paying the same amount they would have paid if the utility had generated  
17 energy itself or purchased energy elsewhere." *Independent Energy Producers Association, Inc.*  
18 *v. California Public Utilities Commission*, 36 F.3d 848, 858 (9th Cir. 1994) (*IEC v CPUC*). In  
19 other words, if the transmission costs at issue in this docket are not properly includable in the full  
20 avoided cost rate, the QF, and not (ultimately) the utility's ratepayers, is required to pay them.

21 **B. Standard avoided cost rates should not include the non-systematic cost to**  
22 **transmit excess QF output**

23 In the context of this docket, a load pocket refers to the situation where a QF's output is  
24 not required to serve PacifiCorp's load at the point of delivery of the output and it must be  
25 transmitted to where it is needed to serve load. The facts as presented by PacifiCorp show that,  
26 in the aggregate, the company incurs additional third-party transmission costs to move the QF

1 output in the load pocket situation. As explained in PacifiCorp's Opening Brief, PacifiCorp's  
2 payment of the third-party transmission costs on the QF's behalf under these circumstances  
3 would violate PURPA because it would require the company to pay more than the avoided cost  
4 rate.

5 Staff agrees with PacifiCorp's analysis of this issue. Rather than repeat PacifiCorp's  
6 analysis here, staff will instead present the following additional observations.

7 Preliminarily, setting aside the load pocket situation, there is a question whether avoided  
8 costs may include transmission costs under any circumstances. On the one hand, the avoided  
9 cost rate expressly includes only the utility's incremental costs of electric energy or capacity, or  
10 both. *See* OAR 860-029-0010(1). Seemingly, transmission costs to move QF output are not  
11 properly included in the avoided cost rate because such costs are neither energy nor capacity  
12 costs. Further, transmission costs are not listed as one of the avoided cost pricing factors in 18  
13 C.F.R. § 292.304 or in OAR 860-029-0040(5). From this viewpoint, PacifiCorp's proposal to  
14 require QFs to pay transmission costs to move output out of load pockets is required under  
15 PURPA for the simple reason that transmission costs are not energy or capacity costs.

16 However, under the principle that the avoided cost pricing scheme looks to determine the  
17 costs a utility would incur if it had generated the energy itself or purchased it elsewhere,  
18 arguably the avoided cost rate could include transmission costs in some circumstances. In other  
19 words, there is a reasonable argument that transmission (and distribution) costs which are truly  
20 avoided on a system-wide basis because of QF purchases could lawfully be included in the  
21 avoided cost rate.

22 But, the facts of this case essentially present the opposite situation. Here, the QF  
23 purchases at issue do not allow PacifiCorp to *avoid* transmission costs. Rather, the purchase of  
24 the QF output and the need to move it from the load pocket *incurs* transmission costs. Properly  
25 viewed from this perspective, it would be unlawful for the standard avoided cost rate to include  
26 such costs.

1 As PacifiCorp notes in its Opening Brief, this conclusion is also consistent with the  
2 Commission’s analysis of the related issue of QF interconnection costs. In the two dockets that  
3 considered the costs associated with interconnecting a QF to PacifiCorp’s system, the  
4 Commission took a “pay to play” viewpoint and concluded that the QFs should pay the cost of  
5 necessary system upgrades caused by their interconnection with the purchasing utility. *See*  
6 PacifiCorp Opening Brief at 18-19 [citing to Commission Order Nos. 10-132 (UM 1401); and  
7 09-196 (AR 521)].

8 For these reasons, and those expressed by PacifiCorp in its Opening Brief, PURPA, and  
9 ORS 758.505 through 758.555, would be violated if PacifiCorp is required to pay standard  
10 avoided cost rates and also pay the third-party transmission costs necessary to move QF output  
11 from the point of delivery to PacifiCorp’s load.

12 **C. QFs should receive credit for any transmission savings**

13 PacifiCorp discusses at length the law surrounding the court’s interpretation of PURPA’s  
14 avoided cost rates as applied on a systematic basis. *See generally* PacifiCorp Opening Brief at  
15 10-12. The point of PacifiCorp’s discussion is, as staff understands it, if the costs of third-party  
16 transmission *in aggregate* exceed offsetting savings, then PURPA is violated (and conversely, if  
17 third-party transmission savings *in aggregate* fully offset third-party transmission costs, then  
18 there is no unlawful customer subsidy of QFs and PURPA is not violated). PacifiCorp Opening  
19 Brief at 11-12. PacifiCorp goes on to conclude, based upon the Material Facts it presents, that  
20 aggregate costs exceed savings, so there is a violation of PURPA.

21 Staff believes PacifiCorp’s discussion of the state of the law is correct. Generally  
22 speaking, standard avoided cost rates are calculated on a system-wide basis. Thus, it is  
23 appropriate in creating such rates to view transmission costs and savings on an aggregate basis.

24 PacifiCorp here proposes to amend Schedule 37 in order to directly assign third-party  
25 transmission costs to the Schedule 37 QF on a case-by-case basis. PacifiCorp Opening Brief at  
26 18-19. Similarly (and symmetrically), PacifiCorp proposes to credit the Schedule 37 QF with

1 transmission cost savings on a case-by-case basis. *Id.* at 20. Staff fully agrees with PacifiCorp's  
2 proposal – it is consistent with PURPA and with the Commission's treatment of the related issue  
3 of QF interconnection costs in Dockets UM 1401 and AR 521.

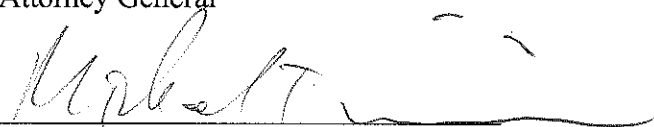
4 **5. Conclusion**

5 For the reasons stated, staff agrees with PacifiCorp's analysis. In Phase One of this  
6 docket, the Commission should conclude that PURPA would be violated under the facts as stated  
7 by PacifiCorp. In Phase Two, the parties can explore and resolve factual disputes, if any.  
8 Additionally, Phase Two may be used to consider if there are other, perhaps better, approaches to  
9 resolving the load pocket issue than the revisions to Schedule 37 PacifiCorp proposes in its  
10 Advice No. 11-011.

11 DATED this 16<sup>th</sup> day of November, 2011.

12 Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I certify that on November 17, 2011, I served the foregoing The Staff of the Public Utility  
3 Commission of Oregon's Response Brief upon the parties in this proceeding by electronic mail.

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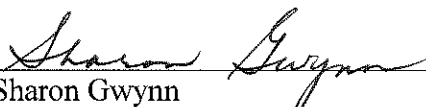


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