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February 3, 2010

*Via Electronic and U.S. Mail*

Public Utility Commission  
Attn: Filing Center  
550 Capitol St. NE #215  
P.O. Box 2148  
Salem OR 97308-2148

Re: Investigation into determination of resource sufficiency  
**Docket No. UM 1396**

Dear Filing Center:

Enclosed please find an original and one copy of the Final Comments on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick  
Brendan E. Levenick

Enclosures

cc: Service List

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Final Comments of the Industrial Customers of Northwest Utilities upon the parties on the service list, shown below, by causing the same to be sent by electronic mail to all parties, as well as, deposited in the U.S. Mail, postage-prepaid, to parties which have not waived paper service.

Dated at Portland, Oregon, this 3rd day of February, 2010.

*/s/ Brendan E. Levenick*  
Brendan E. Levenick

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1396**

In the Matter of	)	
	)	
THE PUBLIC UTILITY COMMISSION OF	)	FINAL COMMENTS OF THE
OREGON	)	INDUSTRIAL CUSTOMERS OF
	)	NORTHWEST UTILITIES ON THE
Investigation into determination of resource	)	PROPOSED DECISION OUTLINE
sufficiency, pursuant to Order No. 06-538.	)	
_____	)	

**I. INTRODUCTION**

The Industrial Customers of Northwest Utilities (“ICNU”) submits these final comments regarding the Oregon Public Utility Commission’s (“OPUC” or the “Commission”) modified proposed decision framework. If the Commission does not adopt the resource sufficiency/deficiency methodology proposed by ICNU witness Randall Falkenberg in this proceeding, then the Commission should adopt its proposed decision outline, with the revisions recommended in ICNU’s initial, reply and final comments. The success of the Commission’s decision outline is contingent upon the details regarding how it will be implemented, many of which are impossible to glean from an outline. In addition, it may be important for the Commission to monitor whether the utilities will maintain their historic practices of pursuing creative strategies to stonewall and refuse to enter into legitimate qualifying facility (“QF”) contracts under the decision outline. ICNU is hopeful, however, that with a few revisions, the modified decision outline could remedy some of the problems facing renewable QFs in Oregon.

ICNU supports the proposal to allow renewable QFs the option to sell their energy and associated renewable energy credits (“RECs”) to the utilities and obtain avoided cost pricing, based on the utilities next major renewable energy acquisition. The use of a renewable energy option sufficiency/deficiency period and proxy pricing (if properly structured and implemented) could eliminate some of the problems for renewable QFs that would result from simply utilizing the new thermal resource date in the utilities’ integrated resource plans (“IRPs”) to demark the resource sufficiency and deficiency periods.

ICNU recommends that the Commission allow Oregon renewable QFs to sell power based on the costs of renewable resources if the utilities need to acquire renewable resources to satisfy any applicable renewable portfolio standard (“RPS”). QF avoided costs should be based on the utilities’ actual incremental costs that, but for the purchase from the QFs, the utility would generate or purchase from another source. If a utility is building or otherwise acquiring renewable facilities to meet the RPS requirements of another state or the Federal government, then a renewable QF should be allowed to obtain pricing based on the cost saved by avoiding those renewable resources.

ICNU also notes that the Commission appears to have modified its proposed decision outline to: 1) revise when parties may seek updates regarding changes to avoided costs, 2) change how the Commission will address partially acknowledged IRPs, and 3) delete the resource deficiency period regarding peaking units. ICNU supports the clarification regarding updates to avoided cost filings, but is concerned about the elimination of the proposal regarding when gas peakers are the next major resource.

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The use of the utilities' IRP plan to build gas combined cycle combustion turbines ("CCCT") to determine the resource sufficiency/deficiency period, without additional changes, will significantly harm non-renewable QFs.

## **II. BACKGROUND**

This proceeding was opened on October 23, 2008 to address when utilities should be considered resource sufficient or deficient. In Docket No. UM 1129, the Commission determined that avoided costs should be differentiated to reflect the utility's resource position. Re Staff's Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 27 (May 13, 2005). In the compliance phase of UM 1129, the parties addressed the issue of when a utility should be considered resource deficient, but the Commission deferred the issue to this proceeding. Docket No. UM 1129, Order No. 06-538 at 54 (Sept. 20, 2006). The methodologies used by the utilities, however, allowed the utilities to claim to be resource sufficient, but to acquire significant amounts of new capacity and energy resources during the sufficiency periods identified in their avoided cost filings. In this proceeding, the parties addressed the resource sufficiency and deficiency issues in testimony and briefing. ICNU also proposed different avoided cost pricing methodologies.

On September 29, 2009, Administrative Law Judge ("ALJ") Power reopened this proceeding, requesting additional comments from the parties. The Commission proposed a decision outline that would establish a new framework for the determination of resource sufficiency for the purposes of calculating avoided cost payments to QFs. Parties submitted initial and reply comments. On January 6, 2010,

ALJ Power set a date for final comments, proposed a modified decision outline, and specifically requested that the parties comment on ICNU's proposal to allow eligible renewable QFs to sell power based on the costs of renewable resources a utility may acquire in order to satisfy a Federal RPS or an RPS in another state.

### **III. COMMENTS**

#### **1. The Commission Should Allow Eligible Oregon Renewable QFs to Offset the Utilities' Total RPS Requirements – Not Just Oregon's RPS Needs**

The Commission has proposed separate resource sufficiency/deficiency periods and avoided cost payments be available for renewable and thermal QFs. Renewable QFs would have the option to choose an avoided cost payment stream based on the avoided cost of a major new renewable acquisition, if the QF cedes its RECs over to the utility. The Commission's proposal makes practical sense because it more closely aligns for renewable QFs both the pricing and deficiency/sufficiency period with the actual renewable resources the utility will avoid by purchasing the renewable QF's power. The Commission's proposal also is consistent with the law, which requires utilities to pay QFs the full avoided costs, which should be based on a utility's actual incremental costs that, but for the purchase from the QFs, the utility would generate or purchase from another source. 16 U.S.C. § 824a-3(d); ORS §§ 758.505; 515.

ICNU recommends that eligible renewable QFs should not be limited only to the Oregon RPS because utilities may need to acquire renewable resources to meet other state or Federal RPS requirements. PacifiCorp currently is subject to RPS requirements in Oregon, California and Washington, and must acquire RECs to meet its

obligations in all three states. PacifiCorp, Idaho Power Company and Portland General Electric may become subject to additional state and/or Federal RPS requirements in the future. Thus, Oregon utilities face (or may in the future face) the practical situation of being required to acquire RECs to meet different RPS obligations.

ICNU simply recommends that renewable QFs be allowed to sell renewable power and RECs to an Oregon utility to offset that utility's actual RPS needs—regardless of whether the utility's need for renewable resources was caused by the Oregon RPS. This is consistent with the utilities' actual resource acquisition planning process. For example, PacifiCorp does not acquire new resources only to meet its Oregon load and RPS requirements, but acquires new resources on an integrated basis to meet the various needs of all its jurisdictions. Eligible renewable QFs should not only offset PacifiCorp's Oregon RPS needs, but should be allowed to offset the entire renewable resource that PacifiCorp is planning to acquire. If PacifiCorp plans to build or acquire a 100 MW wind resource to meet its total state RPS requirements, then an eligible renewable QF should be allowed to sell power and RECs to meet the Company's actual resource acquisition plans—not merely the RECs that are used to meet Oregon's RPS.

Adopting ICNU's recommendation also reflects the fact that RPS requirements vary and that utilities may need to acquire different types of RECs. Currently, Oregon, Washington and California each have different definitions for what type of resource will qualify to meet their RPS standards. Thus, a REC that meets Oregon's RPS may not qualify in Washington or California and vice versa. It is unlikely



that additional state or Federal RPSs will exactly mirror the current Oregon RPS. A renewable QF should be able to sell power if it meets any RPS requirements for an Oregon utility.

**2. Renewable QFs Should Have the Option to Sell With or Without RECs**

The modified decision outline clearly provides renewable QFs with the option to retain their RECs and sell power based on the sufficiency/deficiency date and resource costs of the gas CCCT, or to sell their RECs and obtain avoided cost pricing based on a new major renewable resource. This option is consistent with the Commission's previous decision that "contracts to purchase renewable electricity do not transfer the green tags associated with the purchased electricity." Re OPUC Rulemaking, Docket No. AR 495, Order No. 05-1229 at 8 (Nov. 28, 2005). Allowing QFs to retain the option to retain their RECs and sell them separately, or bundled them with their energy in sales to their utility will provide QFs with additional options to be economically viable. This will not harm ratepayers or utilities, because the QFs will receive avoided cost pricing based on and consistent with the resources they will cause the utility to avoid.

**3. The Commission Should Not Use the 100 MW Threshold for Determining Major Renewable Resources**

The Commission's decision outline appears to still propose that renewable QFs will not be eligible for renewable avoided cost pricing unless the utilities plan to acquire a renewable resource of 100 MWs or more. Although ICNU is not repeating most of the arguments it raised in its initial and reply comments, ICNU is raising this issue again because adopting a 100 MW threshold for determining a major renewable

resource could nearly eliminate the practical impact of separate pricing for eligible renewable QFs.

PacifiCorp has acquired a significant amount of renewable energy over the past few years; however, the vast majority of the projects have been sized under 100 MWs. PacifiCorp lists twenty two renewable energy projects on its website, with only three of those (Leaning Juniper, Marengo and Top of the World) being sized at 100 MW or above. Six of the projects are listed at 94 to 99 MWs, and five projects between 50 MWs and 79 MWs. Some of the less than 100 MWs projects were originally sized greater than 100 MWs, but the Company re-sized a number of facilities in order to avoid the Commission's competitive bidding rules. In addition, the Company built or is planning to build a number of projects that arguably should have been considered part other, larger PacifiCorp wind facilities. (These include 70 MW Marengo II, the 39 MW Glenrock, the 99 MW Rolling Hills, and the 19 MW Seven Mile Hill II).

Contrary to the arguments of the utilities, ICNU is not requesting in this proceeding that the Commission modify its competitive bidding guidelines to require Oregon utilities to conduct competitive bids for renewable resources under 100 MWs. See PacifiCorp/Idaho Power Reply Comments at 3; PGE Reply Comments at 4. Regardless of the size threshold used for competitive bidding, ICNU recommends that the size threshold for major renewable resources be set at 40 MWs for new plants, and at 15 MWs for projects which are built at or adjacent to existing renewable plants. This will better ensure that, if the utilities acquire renewable resources, then renewable QFs will be able to obtain pricing based on the appropriate pricing methodology.

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**4. The Commission Should Remedy the Problem Associated With the Utilities Acquiring Resources During the Resource Sufficiency Period**

The Commission's proposed decision outline appears to worsen the problems associated with resource sufficiency/deficiency for non-renewable QFs. For non-renewable QFs, the decision outline would use the utilities' IRP dates for acquiring a new gas CCCT for determining the resource deficiency/sufficiency period. This could result in non-renewable QFs being paid only a market based rate during the sufficiency period, when the utility resources they would displace would be a variety of resources, including market purchases, capacity contracts, wind generation, DSM, plant upgrades, cogeneration, and other resources. If the Commission adopts the decision outline, then the resource sufficiency prices for all QFs should be based on a weighted average of the resources the utilities are actually planning to build or acquire during the resource sufficiency time period.

The Commission's original decision outline appeared to recognize that the utilities do not only make market purchases during the resource sufficiency period, but acquire other resources. The decision outline included a pricing option based on the costs of a peaking resource, if the peaking resource precedes the acquisition of a CCCT. This option was removed from the modified decision outline without proposing a new remedy to the problem that utilities plan to and in fact acquire numerous resources before the date in their IRP for acquiring a new CCCT. The Commission should not adopt the utilities proposal to use their IRPs to set the resource sufficiency/deficiency period without

changing the manner in which non-renewable QFs are paid during the resource sufficiency period.

**5. The Commission Should Limit the Ability of the Utilities to File Avoided Cost Updates**

The Commission modified its proposed decision outline to clarify that parties can seek to modify avoided costs if there are significant changes, but that changes are not significant simply because a utility has made a new IRP filing. ICNU supports this proposed modification. The proposed decision outline leaves a number of outstanding issues related to the procedural aspects of avoided cost update filings, which do not directly impact the question of resource sufficiency/deficiency and the pricing methodology. ICNU recommends that the Commission address these and other implementation issues in a future proceeding.

**IV. CONCLUSION**

The modified decision outline is a positive step which can benefit both renewable QFs and ratepayers by better matching the avoided cost pricing with the QF resources. Unless the Commission makes additional modifications, however, the practical impact for renewable QFs could be *de minimus*. In addition, the modified decision outline does not appear to remedy the problems that have been historically experienced by non-renewable QFs. ICNU urges the Commission to either adopt ICNU's original recommendations, or use the modified decision outline as a strong foundation for adjusting the resource sufficiency/deficiency period and avoided cost pricing methodology.

Dated this 3rd day of February, 2010.

Respectfully submitted,

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/s/ Irion A. Sanger

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