BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1396
Phase II

In the Matter of THE PUBLIC UTILITY COMMISSION OF OREGON Investigation into Determination of Resource Sufficiency, pursuant to Order No. 06-538.	))))))))	REPLY COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") submits these Reply Comments in Phase II of the Oregon Public Utility Commission's (the "Commission" or "OPUC") investigation into the determination of resource sufficiency and avoided cost issues for renewable qualifying facilities ("QF"). ICNU limits these Reply Comments to address new issues raised by other parties in their Phase II Opening Comments and/or the workshop held on May 24, 2011. Except as revised herein, ICNU continues to support the recommendations regarding renewable resource avoided cost pricing and sufficiency period included in ICNU's Phase II Opening Comments. ICNU's primary recommendation is that the Commission establish a separate renewable avoided cost rate at which renewable QFs could elect to sell their power during periods in which a utility needs renewable resources. The Commission should maintain its well established policy that a renewable QF is not required to sell its renewable energy credits ("RECs") to the utilities nor require a renewable QF to sell power at only a

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

renewable avoided cost rate. Instead, renewable QFs should retain the option to keep their RECs and sell power to the utilities at the standard avoided cost rate, or sell their RECs and power to the utilities at an appropriate renewable avoided cost rate during the renewable resource deficiency period. As long as the Commission accurately sets both the standard and renewable avoided cost rates, then both ratepayers and QFs will benefit from this new option.

II. COMMENTS

1. Out of State Renewable Portfolio Standards Should Be Taken Into Account When Determining Whether a Utility is Renewable Resource Sufficient

Staff has changed its position on this issue, now arguing that it "does not believe that out-of-state renewable portfolio standards should be used to determine when a renewable resource can be avoided." Staff Phase II Opening Comments at 2. Staff notes that PacifiCorp is the only utility subject to renewable portfolio standards in multiple states and that PacifiCorp's multi-state cost allocation methodology requires that above market resource costs that are acquired on account of a renewable portfolio standard ("RPS") should be assigned on a situs basis. Id. Regardless of how the costs of above-market renewable resources are allocated, Staff fails to recognize that the renewable resource avoided resource period should be based on the utility's actual plans or acquisitions of renewable resources, which includes various states' RPS.

Staff's earlier comments in this proceeding were consistent with ICNU's position, stating that "Staff agrees with the ICNU proposal that a utility will be renewable deficient if the Action Plan calls for the acquisition of renewable resources of RECs anywhere in a multi-state utility's system." Staff Phase I Final Comments at 2. Staff continued to explain in Phase I that

DAVISON VAN CLEVE, P.C.
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Portland, OR 97204
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"[n]ew resource costs are allocated across all jurisdictions and Oregon renewable QFs are an efficient way of meeting RPS requirements in all qualifying jurisdictions." Id.

Staff's Phase I comments accounted for how PacifiCorp actually plans and decides to acquire resources, which is based on a variety of factors, including future load growth, and its existing resource pool. PacifiCorp's plans are also based on a myriad of state and federal regulatory requirements (including state renewable portfolio standards), emissions requirements, and limitations regarding hydro relicensing. PacifiCorp's plans are formalized in its Integrated Resource Plan ("IRP") Action Plan, which estimates the least cost resource portfolio to meet its total system resource needs. ICNU's simple position is that the avoided cost resource deficiency period should be based on the time PacifiCorp (or any other utility) actually acquires or plans to acquire renewable resources.

Staff's Phase II comments raises a different question regarding the allocation of costs associated with PacifiCorp's acquisition of above-market renewable resources in order to comply with a state renewable portfolio standard. Staff accurately characterizes PacifiCorp's current cost allocation methodology as requiring any above-market costs to be assigned on a situs basis. ICNU agrees that it is preferable to allocate the above-market costs of resources acquired to meet state specific regulatory requirements or other unique circumstances (like above average load growth) on a situs basis.

The issue of cost allocation for above-market resource costs is different from whether the date for determining the renewable resource sufficiency and deficiency period should account for out of state renewable portfolio standards. Staff's new position ignores the

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

fact that PacifiCorp has claimed that it can both meet state renewable portfolio standards and acquire the lowest cost resources to meet its future requirements. PacifiCorp has the responsibility to prudently acquire all new resources consistent with both state renewable portfolio standards and traditional least cost planning principles. Staff's concern would be legitimate only if PacifiCorp's IRP Action Plan indicated that the Company needed to acquire (or PacifiCorp was actually found acquiring) above cost renewable resources because of an out-of-state of RPS. Therefore, the Commission should start the renewable resource deficiency period when utilities actually acquire or plan to acquire renewable resources, and (if it occurs) should allocate the costs of any above market resource acquisitions according to the applicable interstate cost allocation methodology.

2. The Commission Should Reject PacifiCorp's Proposal to Prevent a Renewable QF from Selecting the Higher Avoided Cost Rate

PacifiCorp disingenuously states that it supports allowing a renewable QF to choose between a renewable and non-renewable avoided cost stream, but then proposes a "condition" which effectively means that the renewable QF would not have any practical choice. PacifiCorp Phase II Comments at 8-9. PacifiCorp proposes that a renewable QF can "choose" the non-renewable avoided cost stream only when the non-renewable avoided cost rate is lower than the renewable avoided cost rate. Id. From a practical perspective, most renewable QFs will only have one real option: the renewable avoided cost rate. This is because renewable QFs would be able to select the non-renewable rate when it is economically disadvantageous to choose the non-renewable rate. The Commission should reject PacifiCorp's proposal to offer a Hobson's choice to renewable QFs.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
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PacifiCorp has failed to provide an adequate explanation for its proposal of a draconian limitation on a renewable QF's ability to select between a renewable or non-renewable avoided cost rate. PacifiCorp's comments provide a brief justification for its proposal, stating that "[i]f the renewable avoided cost stream was lower than the non-renewable stream, allowing the renewable QF to choose the higher avoided cost stream would result in the QF being paid more than its avoided cost, contrary to PURPA." PacifiCorp Phase II Comments at 9.

PacifiCorp provided additional explanation at the workshop in this proceeding and may provide further support in reply comments. ICNU understands that PacifiCorp's actual concern is that the non-renewable avoided cost rate is not accurate and pays certain renewable QFs more than PacifiCorp's actual avoided costs. ICNU understands that PacifiCorp's concern does not apply to baseload hydro and biomass renewable QFs, but that PacifiCorp believes that intermittent renewable QFs are being overcompensated under the non-renewable avoided cost rate because the non-renewable avoided cost rate does not reduce the rate to reflect the intermittent nature of these QFs.

PacifiCorp's underlying concern is that the Commission's current method for compensating certain renewable QFs is excessive. The Commission, however, addressed and resolved this issue early in its 2005 investigation regarding avoided costs. The Commission required the utilities to pay all QFs, including intermittent renewables, a non-renewable avoided cost rate for all energy "whether intermittent or firm, that is delivered by a QF under a standard contract to a utility up to the nameplate rating of the project." Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 2 (May 13, 2005). The

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

Commission rejected arguments by the utilities that the intermittent nature of certain QFs should be accounted for in the standard avoided cost rate, and adopted Staff's recommendation based on the average availability of intermittent resources. Id. at 14, 28.

ICNU would not be opposed to revisiting the Commission's previous resolution of this issue, especially in light of what has been learned in recent years regarding the costs of intermittent resources. Regardless of whether it is appropriate to revisit the Commission's earlier resolution of this issue, PacifiCorp's proposed limitation on all renewable QFs is an inappropriate way to resolve problems with the intermittent nature of some QFs. Many QFs, including baseload hydro and biomass facilities, are not intermittent and are essentially firm resources. PacifiCorp has not provided any explanation in its comments or at the workshop regarding why firm QFs would be paid more than PacifiCorp's actual avoided costs if they elect to retain their RECs and be paid based on a non-renewable avoided cost rate.

PacifiCorp's proposal would also effectively reverse the Commission's policy in which renewable QFs that generate RECs can sell their electricity to the utilities while retaining the RECs. Re Commission Rulemaking, Docket No. AR 495, Order No. 05-1229 at 7-9 (Nov. 28, 2005). PacifiCorp's proposal would result in renewable QFs no longer having the option to retain their RECs, but would effectively be required to sell both energy and RECs to the utilities. This would be a significant change to Commission policy, which would run contrary to the Legislature's recent guidance regarding REC ownership. The Commission should reject PacifiCorp's attempt to modify this fundamental Commission policy, especially when PacifiCorp

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characterizes this change as a "qualification" upon a QF's ability to select an avoided cost rate under which to sell their power.

3. Renewable QFs Should Qualify for the Renewable Avoided Cost Rate Only If They Sell RECs that the Utilities Need

PacifiCorp states that a renewable QF should be required to sell both energy and RECs to the utilities in order to qualify under the renewable avoided cost rate. PacifiCorp Phase II Comments at 8-9. This recommendation is consistent with ICNU's position, and it is logical because one reason utilities acquire or build renewable resources is to qualify under RPS. A QF that sells energy that happens to be renewable, but does not qualify for a state RPS standard, should only be eligible to sell power based on the non-renewable rate.

Similarly, a QF should be eligible for the renewable avoided cost rate as long as it sells RECs that can be used to meet <u>any</u> RPS obligations the utility has. State RPS standards do not treat all renewable resources equally. For example, certain biomass and hydro facilities may qualify as "renewable" under the California RPS, but not the Oregon RPS.
Thus, an Oregon QF that sells RECs that qualify under the California—but not Oregon—RPS should be able to sell RECs to PacifiCorp if it needs the RECs to meet its California RPS requirements.

This is consistent with how PacifiCorp actually plans and acquires its renewable resources. PacifiCorp has acquired renewable resources that can be used to meet its state portfolio standards in Oregon, Washington and California. If PacifiCorp is planning to acquire renewable resources in its Action Plan that will meet its California or Washington RPS requirements, then renewable QFs should be able (but not required) to sell renewable power and

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RECs at the renewable avoided cost rate (as long as the renewable QFs' RECs qualify under an applicable state or federal RPS that PacifiCorp needs). ICNU recommends that the Commission should clarify that a renewable QF should be eligible to receive avoided costs based on the costs of a renewable resource if the QF qualifies under any RPS that applies to an Oregon utility.

4. RPS Implementation Plans Should Be Used If they Include Additional Information Not Available in an IRP

The Oregon Department of Energy ("DOE") recommended that the Commission consider use of the RPS Implementation plan along with the IRP Action Plan to ensure that the renewable avoided cost rate accurately reflects the full avoided costs of integrating renewable QFs into its system. DOE Phase II Comments at 3. ICNU supports this recommendation because the IRP Action plan may not fully capture all the associated costs and benefits of renewable resources, and the RPS Implementation plan may contain additional relevant information that will be useful when determining the renewable avoided cost deficiency period or rate. For example, the RPS Implementation plans include a detailed calculation of the incremental cost comparison for renewable resources that could provide additional information when setting the renewable avoided cost rate. Re PGE 2009 Renewable Portfolio Standard Implementation Plan, Docket No. UM 1466, Order No. 10-173 at Appendix A at 1 (May 4, 2010).

5. PGE's Proposed Renewable Avoided Cost Rate Proposal Needs Further Development

PGE has proposed a methodology for setting the renewable avoided cost rate during the resource sufficiency period that differs from ICNU's and Staff's. ICNU and Staff

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have proposed that during the resource sufficiency period, when the utilities' plans show that they do not need renewable resources, then the renewable avoided cost rate will be based on the market prices. See Staff Phase II Comments at 5. The underlying premise of ICNU and Staff's positions is that, during the time period in which the utilities do not need renewable resources or RECs, there is no need for a separate renewable avoided cost rate. PGE, however, has proposed that, during the resource sufficiency period (i.e., when PGE is not planning on building or acquiring renewable resources) PGE will offer a renewable avoided cost rate based on market prices, plus an adder for the estimated value of RECs. PGE Phase II Comments at 2.

PGE's comments do not explain the rationale for why it should purchase RECs when it is resource sufficient nor do they provide a method to estimate the value of RECs during the resource sufficiency period. Id. Subsequently, PGE has explained that it needs RECs for its voluntary renewable resource programs, even when it is not building or acquiring renewable resources and is otherwise considered "renewable resource sufficient."

ICNU supports PGE's proposal in principle. Renewable QFs should be provided the option to sell energy and RECs if the utility is buying RECs, but not building or purchasing renewable resources. There remain many unanswered questions about PGE's proposal, because PGE's comments provide few details regarding how the proposal would work. PGE even acknowledges that ascertaining the REC value "is a difficult task" and suggests that parties hold meeting to determine if an appropriate method for estimating REC values can be developed. Id. Since the details of PGE's proposal have not been sufficiently developed, the parties should be

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
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able to review it thoroughly and submit comments during a future proceeding in which the avoided cost rates are implemented.

6. Idaho Power Company's Avoided Cost Proposal Has Merit

Idaho Power Company ("Idaho Power") has proposed a novel approach to establishing avoided costs for all resource types, including renewable resources. Idaho Power proposes that it would develop a standard avoided cost rate for each type of generator. Idaho Power Phase II Opening Comments at 11. Each different resource would be eligible to receive an avoided cost rate based on the value of energy that the QF delivers to Idaho Power. Id. Idaho Power explains that the variability of supply characteristics of the resources warrant a different avoided cost rate for each QF. Id. Idaho Power would use its IRP to analyze the value to Idaho Power of each resource's energy. Although its comments do not address the issue, Idaho Power has subsequently clarified that renewable QFs would not be ceding their RECs to Idaho Power when they sell power under Idaho Power's approach. The QFs should retain their RECs under Idaho Power's IRP method, because the IRP is simply valuing the energy provided and not considering other non-energy benefits like RECs.

Idaho Power also argues that a renewable QF should not be able to choose between a renewable avoided cost rate and a non-renewable avoided cost rate. Idaho Power argues that its resource specific approach is so different from the Commission's traditional avoided cost approach that separate renewable and non-renewable avoided cost rates are not appropriate. Id. at 11-12. ICNU does not agree that there are no circumstances under which a resource specific approach could not include renewable and non-renewable avoided cost rates.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
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ICNU, however, does not oppose Idaho Power using its proposal, as Idaho Power is not subject to RPS requirements at this time and already uses a different methodology for setting avoided costs.

The Renewable Energy Coalition ("REC") appears to recommend that a version of the Idaho Power approach be established to set the renewable avoided cost rate more accurately. REC Comments at 3. ICNU concurs with REC's statement that the prime benefit of Idaho Power's method is that it recognizes that "one renewable resource cannot fit all; the characteristics of each type of renewable resource must be reflected in the avoided costs a utility pays each type of renewable QF." Id. The Commission should remain cognizant of the diversity of QF generation types (i.e., not all renewable QFs are wind resources) and that different QF resources can provide dramatically different values to the utilities. ICNU agrees with REC that the renewable avoided cost rate should distinguish between different resource types, and (at a minimum) a QF's capacity factor and firmness should be an important factor in setting the renewable avoided cost rate. As explained above, ICNU is also not opposed to revisiting the issue of the firmness of QF resources in the standard non-renewable avoided cost rates.

III. CONCLUSION

This proceeding presents the Commission with a number of complex public policy issues, which is demonstrated by the number of issues the Commission requested that the parties address, as well as the wide variety of comments and proposals submitted by the parties. The Commission's decision in this case could have significant economic impacts on QFs, as well as shape the manner and cost of Oregon utilities' acquisition of renewable resources.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
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ICNU recommends that the Commission establish a separate renewable avoided cost rate that accurately reflects the value of the energy that the QF resource provides to the utilities. QFs should be eligible to sell power under the renewable avoided cost rate, as long as the QF sells RECs that the utility needs to meet any applicable state RPS. The Commission should not reverse its existing policy in which QFs can sell energy under a non-renewable rate and retain their RECs. ICNU continues to support the recommendations in its Opening Phase II Comments, except that ICNU is not opposed in principle to PGE's proposal to offer a renewable avoided cost rate during the renewable resource sufficiency period, nor is ICNU opposed to Idaho Power using its own method instead of offering a separate renewable avoided cost rate.

Dated this 28th day of June, 2011.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion A. Sanger
Irion A. Sanger
Davison Van Cleve, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Phone: (503) 241-7242
Fax: (503) 241-8160
mail@dvclaw.com
Of Attorneys for Industrial Customers
of Northwest Utilities

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Staff has changed its position on this issue, now arguing that it "does not believe that out-of-state renewable portfolio standards should be used to determine when a renewable resource can be avoided." Staff Phase II Opening Comments at 2. Staff notes that PacifiCorp is the only utility subject to renewable portfolio standards in multiple states and that PacifiCorp's multi-state cost allocation methodology requires that above market resource costs that are acquired on account of a renewable portfolio standard ("RPS") should be assigned on a situs basis. Id. Regardless of how the costs of above-market renewable resources are allocated, Staff fails to recognize that the renewable resource avoided resource period should be based on the utility's actual plans or acquisitions of renewable resources, which includes various states' RPS.

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RECs at the renewable avoided cost rate (as long as the renewable QFs' RECs qualify under an applicable state or federal RPS that PacifiCorp needs). ICNU recommends that the Commission should clarify that a renewable QF should be eligible to receive avoided costs based on the costs of a renewable resource if the QF qualifies under any RPS that applies to an Oregon utility.

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Telephone: (503) 241-7242

able to review it thoroughly and submit comments during a future proceeding in which the avoided cost rates are implemented.

6. Idaho Power Company's Avoided Cost Proposal Has Merit

Idaho Power Company ("Idaho Power") has proposed a novel approach to establishing avoided costs for all resource types, including renewable resources. Idaho Power proposes that it would develop a standard avoided cost rate for each type of generator. Idaho Power Phase II Opening Comments at 11. Each different resource would be eligible to receive an avoided cost rate based on the value of energy that the QF delivers to Idaho Power. Id. Idaho Power explains that the variability of supply characteristics of the resources warrant a different avoided cost rate for each QF. Id. Idaho Power would use its IRP to analyze the value to Idaho Power of each resource's energy. Although its comments do not address the issue, Idaho Power has subsequently clarified that renewable QFs would not be ceding their RECs to Idaho Power when they sell power under Idaho Power's approach. The QFs should retain their RECs under Idaho Power's IRP method, because the IRP is simply valuing the energy provided and not considering other non-energy benefits like RECs.

Idaho Power also argues that a renewable QF should not be able to choose between a renewable avoided cost rate and a non-renewable avoided cost rate. Idaho Power argues that its resource specific approach is so different from the Commission's traditional avoided cost approach that separate renewable and non-renewable avoided cost rates are not appropriate. Id. at 11-12. ICNU does not agree that there are no circumstances under which a resource specific approach could not include renewable and non-renewable avoided cost rates.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

ICNU, however, does not oppose Idaho Power using its proposal, as Idaho Power is not subject to RPS requirements at this time and already uses a different methodology for setting avoided costs.

The Renewable Energy Coalition ("REC") appears to recommend that a version of the Idaho Power approach be established to set the renewable avoided cost rate more accurately. REC Comments at 3. ICNU concurs with REC's statement that the prime benefit of Idaho Power's method is that it recognizes that "one renewable resource cannot fit all; the characteristics of each type of renewable resource must be reflected in the avoided costs a utility pays each type of renewable QF." Id. The Commission should remain cognizant of the diversity of QF generation types (i.e., not all renewable QFs are wind resources) and that different QF resources can provide dramatically different values to the utilities. ICNU agrees with REC that the renewable avoided cost rate should distinguish between different resource types, and (at a minimum) a QF's capacity factor and firmness should be an important factor in setting the renewable avoided cost rate. As explained above, ICNU is also not opposed to revisiting the issue of the firmness of QF resources in the standard non-renewable avoided cost rates.

III. CONCLUSION

This proceeding presents the Commission with a number of complex public policy issues, which is demonstrated by the number of issues the Commission requested that the parties address, as well as the wide variety of comments and proposals submitted by the parties. The Commission's decision in this case could have significant economic impacts on QFs, as well as shape the manner and cost of Oregon utilities' acquisition of renewable resources.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

ICNU recommends that the Commission establish a separate renewable avoided cost rate that accurately reflects the value of the energy that the QF resource provides to the utilities. QFs should be eligible to sell power under the renewable avoided cost rate, as long as the QF sells RECs that the utility needs to meet any applicable state RPS. The Commission should not reverse its existing policy in which QFs can sell energy under a non-renewable rate and retain their RECs. ICNU continues to support the recommendations in its Opening Phase II Comments, except that ICNU is not opposed in principle to PGE's proposal to offer a renewable avoided cost rate during the renewable resource sufficiency period, nor is ICNU opposed to Idaho Power using its own method instead of offering a separate renewable avoided cost rate.

Dated this 28th day of June, 2011.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

<u>/s/ Irion A. Sanger</u>
Irion A. Sanger
Davison Van Cleve, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Phone: (503) 241-7242
Fax: (503) 241-8160
mail@dvclaw.com
Of Attorneys for Industrial Customers
of Northwest Utilities

Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 ● FAX (503) 241-8160 ● mail@dvclaw.com
Suite 400
333 S.W. Taylor
Portland, OR 97204

June 28, 2011

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: In the Matter of the PUBLIC UTILITY COMMISSION OF OREGON Investigation into determination of resource sufficiency, pursuant to Order No. 06-538
Docket No. UM 1396

Dear Filing Center:

Enclosed please find an original and five (5) copies of the Reply Comments on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance, and please do not hesitate to contact our office if you have any additional questions.

Sincerely yours,

/s/ Sarah A. Kohler
Sarah A. Kohler

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply Comments on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, where paper service has not been waived.

Dated at Portland, Oregon, this 28th day of June, 2011.

/s/ Sarah A. Kohler
Sarah A. Kohler

(W) PACIFIC POWER & LIGHT
JORDAN A WHITE
1407 W. NORTH TEMPLE, STE 320
SALT LAKE CITY UT 84116
jordan.white@pacificorp.com

PACIFICORP
OREGON DOCKETS
825 NE MULTNOMAH ST STE 2000
PORTLAND OR 97232
oregondockets@pacificorp.com

(W) RICHARDSON & O'LEARY
GREGORY M ADAMS
PETER J RICHARDSON
PO BOX 7218
BOISE ID 83702
greg@richardsonandoleary.com
peter@richardsonandoleary.com

(W) ENERGY TRUST OF OREGON
ELAINE PRAUSE
JOHN M VOLKMAN
851 SW 6TH AVE SUITE 1200
PORTLAND OR 97204
elaine.prause@energytrust.org
john.volkman@energytrust.org

(W) RENEWABLE ENERGY COALITION
JOHN LOWE
12050 SW TREMONT ST
PORTLAND OR 97225-5430
jravenesanmarcos@yahoo.com

(W) PORTLAND GENERAL ELECTRIC
RANDY DAHLGREN – 1WTC0702
J RICHARD GEORGE – 1WTC1301
121 SW SALMON ST
PORTLAND OR 97204

(W) MCDOWELL & RACKNER PC
LISA RACKNER
419 SW 11TH AVE - SUITE 400
PORTLAND OR 97204
lisa@mcd-law.com

(W) PUBLIC UTILITY COMMISSION OF OREGON
ED DURRENBERGER
PO BOX 2148
SALEM OR 97301
ed.durrenberger@state.or.us

(W) OREGON DEPARTMENT OF ENERGY
MATT KRUMENAUER
VIJAY A SATYAL
625 MARION ST NE
SALEM OR 97301
matt.krumenauer.state.or.us
vijay.a.satyal@state.or.us

(W) PUC STAFF - DEPARTMENT OF JUSTICE
STEPHANIE S ANDRUS
BUSINESS ACTIVITIES SECTION
1162 COURT ST NE
SALEM OR 97301-4096
stephanie.andrus@state.or.us

STOLL BERNE
DAVID A LOKTING
209 SW OAK STREET, SUITE 500
PORTLAND OR 97204
dlokting@stollberne.com

(W) DEPARTMENT OF JUSTICE
JANET L PREWITT, AAG
NATURAL RESOURCES SECTION
1162 COURT ST NE
SALEM OR 97301-4096

pge.opuc.filings@pgn.com
richard.george@pgn.com

(W) NORTHWEST ENERGY SYSTEMS COMPANY LLC
DAREN ANDERSON
1800 NE 8TH ST., STE 320
BELLEVUE WA 98004-1600
da@thenescogroup.com

(W) COMMUNITY RENEWABLE ENERGY ASSOCIATION
PAUL R WOODIN
1113 KELLY AVE
THE DALLES OR 97058
pwoodin@communityrenewables.org

(W) ANNALA, CAREY, BAKER, ET AL., PC
WILL K CAREY
PO BOX 325
HOOD RIVER OR 97031
wcarey@hoodriverattorneys.com

(W) REGULATORY & COGENERATION SERVICES, INC
DONALD W. SCHOENBECK
900 WASHINGTON ST STE 780
VANCOUVER WA 98660-3455
dws@r-c-s-inc.com

janet.prewitt@state.or.us

(W) IDAHO POWER COMPANY
CHRISTA BEARRY
DONOVAN E WALKER
PO BOX 70
BOISE ID 83707-0070
cbearry@idahopower.com
dwalker@idahopower.com

(W) CITIZENS UTILITY BOARD OF OREGON
ROBERT JENKS
G. CATRIONA MCCRACKEN
610 SW BROADWAY, STE 400
PORTLAND OR 97205
bob@oregoncub.org
catriona@oregoncub.org

(W) THOMAS H NELSON
PO BOX 1211
WELCHES OR 97067-1211
nelson@thnelson.com