

# McDowell & Rackner PC



AMIE JAMIESON  
Direct (503) 595-3927  
amie@mcd-law.com

October 15, 2009

## VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
Salem, OR 97308-2148

**Re: Docket UM 1396**

Enclosed for filing in the above docket are an original and one copy of the Initial Comments of PacifiCorp and Idaho Power. A copy of this filing has been served on all parties to this proceeding as indicated on the attached Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amie Jamieson".

Amie Jamieson

cc: Service List

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1396 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

Michael Weirich  
Department of Justice  
Regulated Utility & Business Section  
1162 Court St NE  
Salem OR 97301-4096  
Michael.weirich@doj.state.or.us

Janet L. Prewitt  
Department of Justice  
Janet.prewitt@doj.state.or.us

Irion Sanger  
Davison Van Cleve PC  
333 SW Taylor - Ste 400  
Portland OR 97204  
ias@dvclaw.com

Ed Durrenberger  
Public Utility Commission of Oregon  
Po Box 2148  
Salem, OR 97308-2148  
ed.durrenberger@state.or.us

Will K Carey  
Annala, Carey, Baker, et al., PC  
wcarey@hoodriverattorneys.com

Vijay A. Satyal  
Oregon Departmenet of Energy  
vijay.a.satay@state.or.us

Bob Jenks  
Citizen's Utility Board of Oregon  
bob@oregoncub.org

Catriona McCracken  
Citizen's Utility Board of Oregon  
Catriona@oregoncub.org

Randy Allphin  
Idaho Power Company  
rallphin@idahopower.com

Mike Youngblood  
Idaho Power Company  
myoungblood@idahopower.com

Christa Beary  
Idaho Power Company  
cbeary@idahopower.com

Bart Kline  
Idaho Power Company  
bkline@idahopower.com

Lisa Rackner  
McDowell & Rackner PC  
lisa@mcd-law.com

Wendy McIndoo  
McDowell & Rackner PC  
wendy@mcd-law.com

Randall Dahlgren  
Rates and Regulatory Affairs  
Portland General Electric  
121 SW Salmon St 1WTC0702  
Portland, OR 97204  
pge.opuc.filings@pgn.com

J. Richard George  
Portland General Electric  
121 SW Salmon 1WTC1301  
Portland, OR 97204  
richard.george@pgn.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

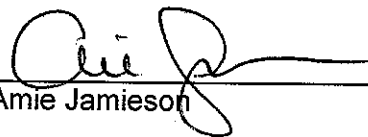
Randall J. Falkenberg  
RFI Consulting Inc.  
PMB 362  
8343 Roswell Rd  
Sandy Springs, GA 30350  
consultrfi@aol.com

Peter J. Richardson  
Richardson & O'Leary PLLC  
peter@richardsonandoleary.com

Paul R. Woodin  
Community Renewable Energy Assoc.  
pwoodin@communityrenewables.org

Thomas H Nelson  
Attorney At Law  
Nelson@Thnelson.Com;  
Jravenesanmarcos@Yahoo.Com

DATED: October 15, 2009

  
Amie Jamieson

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 **UM 1396**

4 In the Matter of:

5 PUBLIC UTILITY COMMISSION OF  
6 OREGON Investigation into determination  
7 of resource sufficiency, pursuant to Order  
No. 06-538

**INITIAL COMMENTS  
OF PACIFICORP AND IDAHO POWER**

8  
9 Pursuant to Administrative Law Judge ("ALJ") Patrick Power's Ruling on  
10 September 29, 2009, PacifiCorp d/b/a Pacific Power ("PacifiCorp") and Idaho Power Company  
11 ("Idaho Power") (together the "Joint Utilities") hereby submit these Initial Comments to the  
12 Public Utility Commission of Oregon ("Commission").

13 **I. INTRODUCTION**

14 The Commission opened this proceeding to establish a methodology for determining  
15 resource sufficiency for purposes of calculating avoided cost payments to qualifying facilities  
16 ("QFs"), consistent with Commission policy and the Public Utility Regulatory Policies Act  
17 ("PURPA"). See *Re Public Utility Commission of Oregon Staff's Investigation Relating to*  
18 *Electric Utility Purchases from Qualifying Facilities*, Docket UM 1129, Order No. 06-538 at 54  
19 (Sept. 20, 2006) [hereinafter "Order No. 06-538"]. The parties previously filed Opening Briefs  
20 and Reply Briefs on this issue. In their briefs, PacifiCorp, Commission Staff ("Staff"), and  
21 Portland General Electric Company ("PGE") proposed that the deficiency period begin when a  
22 new natural gas-fired CCCT is necessary to serve load most economically as identified in the  
23 utility's Integrated Resource Plan ("IRP") or IRP update. PacifiCorp's Opening Brief at 4;  
24 Staff's Opening Brief at 1; PGE's Opening Brief at 2-3. Idaho Power Company ("Idaho  
25 Power") is currently exempt from the requirement that utilities calculate avoided costs based  
26 on their resource position, but agreed that the Staff/PacifiCorp/PGE proposal presented an

1 appropriate methodology in the event Idaho Power adapts its current methodology in the  
2 future to distinguish between sufficiency and deficiency. Idaho Power's Opening Brief at 1-2.

3 On September 29, 2009, ALJ Power issued a Ruling reopening this matter to receive  
4 comments on a proposed Decision Outline that describes an entirely new avoided cost  
5 framework. The Decision Outline increases the complexity of the avoided cost methodology,  
6 and introduces several elements that the Joint Utilities would be willing to explore further. The  
7 Decision Outline also raises many questions that cannot be resolved without a thorough  
8 vetting of the issues and additional development of the record. For this reason, the Joint  
9 Utilities offer these Initial Comments as preliminary thoughts on the Decision Outline, while at  
10 the same time acknowledging that a full evidentiary record would be essential to a full  
11 investigation of the proposal. Prior to developing a full evidentiary record on this proposal,  
12 however, the parties would need more direction from the Commission on the framework  
13 proposed by the Commission and more specificity on the proposals in the Decision Outline.

## 14 II. COMMENTS ON DECISION OUTLINE

### 15 A. Further Development of the Record on the Proposed Decision Outline is 16 Necessary.

17 While the Joint Utilities appreciate the opportunity to provide these comments, the  
18 single round of additional comments set out in the ALJ's ruling will not be sufficient for the  
19 Commission to either adopt or reject the ideas set forth in the Decision Outline.

20 First, the Decision Outline not only presents a new method for establishing resource  
21 sufficiency, it proposes to overturn one of the Commission's central principles for calculating  
22 avoided costs—the assumption of a CCCT as the surrogate resource. In Docket UM 1129,  
23 the Commission “considered, at length, issues regarding the calculation of avoided cost rates”  
24 and left the only issue for resolution in this docket the issue of when a utility is resource  
25 deficient. Order No. 06-538 at 54. The Commission should not consider revisiting the

26

1 conclusions adopted in that order without a full evidentiary record, subject to further direction  
2 to the parties by the Commission.<sup>1</sup>

3 Second, the calculation of avoided costs is beyond the scope of this docket as  
4 reflected in the Issues List adopted by ALJ Power on March 3, 2009, and implicates interests  
5 not before raised in this docket. See *Re. Public Util. Comm'n of Oregon Investigation into*  
6 *Determination of Resource Sufficiency*, UM 1396, Ruling (Mar. 3, 2009). Indeed, the petition  
7 for intervention of the Renewable Energy Coalition on October 8, 2009, filed after all testimony  
8 was submitted in this docket but after the Decision Outline was issued, indicates that the  
9 Decision Outline raises new questions that other parties, not yet involved in this docket, will  
10 wish to address. If the Commission intends to expand the scope of this docket to consider the  
11 issues raised in the Decision Outline, the Commission should do so only after it is clear that all  
12 interested parties are notified and have a chance to fully participate in the investigation.

13 Third, as discussed in further detail below, the Decision Outline as currently proposed  
14 contains ambiguous elements that must be clarified before the proposal can be fully  
15 considered. Such clarification would be best achieved through an informal process such as a  
16 workshop, or formally through data requests.<sup>2</sup> Further development of the record on these  
17 elements would allow the Commission to resolve these ambiguities and prevent additional  
18 litigation on the elements in the future.

19 Finally, the parties simply need more time to analyze the proposal set out in the  
20 Decision Outline. The timeline for these comments has allowed the parties only two weeks to  
21 analyze and prepare a response to the new proposal. By contrast, the parties spent nine  
22 months, two rounds of testimony, two rounds of briefing, and many workshops analyzing the

---

23 <sup>1</sup> The Oregon Administrative Procedures Act requires all Commission orders be supported by  
24 substantial evidence in the record. ORS 183.484. A Commission order adopting the elements in the  
framework will not meet this standard without additional evidence in the record.

25 <sup>2</sup> The fact that the Decision Outline was proposed by the Commission rather than a party raises  
26 the question of how the parties will conduct discovery on the proposals set forth in the Decision Outline.

1 single issue of resource sufficiency, and over three years looking at avoided cost  
2 methodologies in UM 1129. The Joint Utilities request that the Commission clarify its  
3 proposed process for evaluating the Decision Outline. The Joint Utilities request that such  
4 process include further direction from the Commission on the proposals set forth in the  
5 Decision Outline and the ability of parties to submit evidence on new aspects of the Decision  
6 Outline.

7 **B. Specific Comments on Decision Outline**

8  
9 **1. Utilities shall file their avoided costs every two years and, also, 30 days  
after an IRP order is issued.**

10 The first element in the proposed Decision Outline states that the Commission will  
11 retain the current schedule of avoided cost filing—every two years and 30 days after an IRP  
12 order is issued. See OAR 860-029-0080(2) and (3). The Decision Outline goes on to state  
13 that “Parties may seek to update avoided costs based on the results from an RFP [request for  
14 proposal].” The rule governing the schedule of avoided cost filings does not currently limit the  
15 ability of the utility to file its schedule of avoided costs more often than is required by rule. The  
16 Decision Outline is ambiguous as to whether the Decision Outline is proposing to limit the  
17 utility’s ability to update avoided costs to only the times required by the rule or based on the  
18 results from an RFP.

19 The Joint Utilities recommend that the Commission clarify that the Decision Outline  
20 does not limit a utility’s ability to file its schedule of avoided costs between required filings and  
21 in instances where the results are not based on an RFP. Between required avoided cost  
22 filings, events other than RFPs may result in changes to avoided costs that should be  
23 reflected before an avoided cost filing is required. For example, if the utility acquires a  
24 resource outside of an RFP or if the utility’s load changes significantly, an avoided cost filing  
25 may be appropriate before such filing is required by OAR 860-029-0080. Imposing a limit on a  
26 utility’s ability to update avoided costs could result in violations of PURPA because avoided

1 costs may be more than the “incremental cost of alternative electric energy.” 16 U.S.C. §  
2 824a-3(b), (d); See *Re Public Utility Commission of Oregon Staff’s Investigation Relating to*  
3 *Electric Utility Purchases from Qualifying Facilities*, Docket UM 1129, Order No. 05-584 at 6  
4 (May 13, 2005) [hereinafter “Order No. 05-584”].

5 **2. For both off-cycle and post-IRP filings, the start date for a “major**  
6 **resource acquisition” in an action plan of the most recent acknowledged**  
7 **IRP demarcates the resource “sufficiency” and “deficiency” periods.**

8 The Joint Utilities recommend that the Commission allow additional testimony to  
9 evaluate whether using the start date for a “major resource acquisition” is appropriate for  
10 determining periods of resource sufficiency and deficiency. The use of a “major resource  
11 acquisition” as the determining factor for resource sufficiency was raised for the first time in  
12 the Decision Outline. The record therefore does not contain any evidence relating to this  
13 proposal and the parties have had only two weeks to evaluate these new concepts. As a  
14 result, the Joint Utilities request that the Commission clarify these elements of the Decision  
15 Outline and allow the parties time to evaluate and present testimony on this issue.

16 Notwithstanding the request to present additional testimony, the Joint Utilities offer the  
17 following comments.

18 First, the Decision Outline does not resolve how multiple major resource acquisitions in  
19 a given year will be prioritized for purposes of calculating resource sufficiency. Currently,  
20 utilities do not include exact on-line dates for resources in the IRP, but instead, for example,  
21 specify what resources will be needed by the summer of a given year. As a result, a utility  
22 may include more than one major resource acquisition in a year. Allowing additional time to  
23 analyze and present evidence on this issue will give the parties the opportunity to develop  
24 recommendations for prioritizing resources that will be on line in the same year.

25 Second, the Decision Outline uses the “most recent acknowledged IRP” as the  
26 reference for determining sufficiency or deficiency rather than the most recent filed IRP. As  
discussed in PacifiCorp’s Reply Brief, PacifiCorp believes that the use of the most recent filed



1 IRP, rather than an older acknowledged IRP, will provide a more accurate determination of  
2 resource sufficiency because it contains the most up-to-date information. PacifiCorp's Reply  
3 Brief at 2-3. The Commission's IRP procedures include a six-month comment period; as a  
4 result, IRP acknowledgement has historically occurred at least nine months after filing. See  
5 OAR 860-027-0400 (six month comment period for IRPs and updates); see also, e.g., *Re*  
6 *PacifiCorp 2007 Integrated Resource Plan*, Docket LC 42, Order No. 08-232 at 2 (IRP filed in  
7 May, 2007 and acknowledged in April, 2008). Using out-of-date information to determine  
8 resource sufficiency could result in utilities paying QFs amounts that do not reflect avoided  
9 costs in violation of PURPA.

10 PacifiCorp maintains that the best way to balance the need to use up-to-date resource  
11 sufficiency information with the need for the Commission to scrutinize that information is to  
12 use the utility's most recently filed IRP during the time between when a utility files its most  
13 recent IRP and when that IRP is acknowledged, unless the Commission finds good cause to  
14 believe the sufficiency determination in the filed IRP is less accurate than in the most recently  
15 acknowledged IRP. If the Commission rejects this proposed approach, PacifiCorp  
16 recommends that the Commission take steps to remedy the problem of lengthy  
17 acknowledgement proceedings resulting in out-of-date resource sufficiency determinations.  
18 Specifically, PacifiCorp recommends that the Commission consider: (a) implementing  
19 expedited acknowledgment proceedings; (b) acknowledging the IRP on an interim basis until  
20 an acknowledgment order is issued; (c) acknowledging the resource sufficiency determination  
21 on an expedited basis; or (d) taking other steps the Commission deems appropriate to  
22 reconcile the timing difference between filed and acknowledged IRPs.

23

24

25

26

1           **a. Renewable resource acquisitions may be a major resource**  
2           **acquisition for purposes of determining the avoided costs for a**  
3           **renewable resource QF eligible under the RPS.**

4           The reference to the determination of avoided costs in this bullet point is unclear,  
5           because this section of the Decision Outline focuses on the demarcation of sufficiency and  
6           deficiency periods. The Joint Utilities will discuss their position on using renewable resources  
7           to calculate avoided costs in Section II.B.4.b below. With respect to using renewable  
8           resources to determine resource sufficiency, the Joint Utilities understand that if a major  
9           resource acquisition demarcates the sufficiency and deficiency periods, a renewable resource  
10          could trigger the deficiency period if it meets the qualifications of a major resource. To the  
11          extent that this provision sets forth a different standard for renewable resources than is set  
12          forth in the definition of "major resource acquisition," the Joint Utilities recommend that the  
13          Commission clarify the provision and solicit testimony on the issue.

14           **b. Gas peakers may be major resource acquisitions if they have an**  
15           **earlier on-line date than other acknowledged major resource**  
16           **acquisitions (such as a Gas CCCT).**

17          The Joint Utilities believe that this element of the Decision Outline will benefit from the  
18          presentation of additional evidence. The Joint Utilities' question on whether the Decision  
19          Outline intends to set forth a different standard for renewable resources than is set forth in the  
20          definition of "major resource acquisition" is also applicable to the similar provision in the  
21          Decision Outline concerning gas peakers.

22          As discussed in more detail below, the Joint Utilities object to the Decision Outline's  
23          apparent assumption that power from QFs is the same as power from gas peakers. Utilities  
24          cannot dispatch power from QFs in the same manner as they can from peakers. Therefore,  
25          using the incorrect premise that power from QFs allows the utility to avoid power from gas  
26          peakers to calculate avoided costs would result in rates that violate PURPA. This concern  
27          may, however, be limited to the calculation of avoided costs and not affect the use of a gas

1 peaker to demarcate resource sufficiency. The Joint Utilities recommend that the  
2 Commission allow the parties to develop the record on this issue.

3 **c. For partially acknowledged plans, the Commission will indicate**  
4 **how the utility shall determine avoided costs.**

5 Consistent with PacifiCorp's Reply Brief at 2-3 and Section II.B.2 above, PacifiCorp  
6 recommends that the Commission allow utilities to use filed IRPs to determine resource  
7 sufficiency, absent good cause to believe the sufficiency determination in the filed IRP is less  
8 accurate than in the most recently acknowledged IRP.

9 **3. For resource sufficiency periods, avoided costs will be based on**  
10 **appropriate wholesale market price forecasts.**

11 The Joint Utilities recommend that the Commission clarify the language in this element  
12 of the Decision Outline to confirm that it does not reflect a change in the manner in which  
13 utilities calculate avoided costs for resource sufficient periods, as reflected in Order No. 05-  
14 584. See Order No. 05-584 at 2 (using monthly on- and off- peak forward market prices to set  
15 avoided costs). If this provision alters the calculation of avoided costs, the Joint Utilities  
16 request that the Commission clarify the Decision Outline and allow the parties to develop the  
17 record on this issue.

18 **4. For resource deficiency periods, avoided costs will be based on one of**  
19 **three methods of calculating avoided costs depending on the type of**  
20 **major resource proposed in the IRP.**

21 Because this proposed framework is a significant departure from past practice and is  
22 beyond the scope of this docket, the Joint Utilities request that the Commission allow the  
23 parties to submit additional testimony with respect to this issue. Pending further development  
24 of the record, the Joint Utilities provide the following comments with respect to the calculation  
25 of avoided costs.

26 The Joint Utilities' overall concern with this section of the Decision Outline is that it  
appears to allow QFs to choose from alternative avoided cost calculations. For example, the  
Decision Outline states that QFs "may choose" an avoided cost stream based on the cost of a

1 gas CCCT when the major avoidable resource is a gas CCCT, indicating that the QF may  
2 choose an alternative avoided cost at its discretion. The Joint Utilities object to such a  
3 provision, as it would likely result in QFs being paid an amount other than avoided costs and  
4 therefore violate PURPA. The Joint Utilities recommend that once the Commission decides  
5 on avoided cost calculations for the sufficiency and deficiency periods, those calculations be  
6 applied uniformly to all applicable QFs.

7           **a. If a peaking resource precedes another major resource, avoided**  
8           **cost will be based on market prices plus a premium for capacity**  
              **contribution.**

9           Under the terms of the Decision Outline, if a peaking resource precedes another major  
10 resource in a utility's action plan, the avoided cost is based on market rates "plus a premium  
11 for capacity contribution" if the QF provides power when the utility would otherwise use the  
12 peaker. This provision incorrectly assumes that utilities have the ability to treat a QF as a  
13 peaker unit and dispatch the QF power in the same manner as it would a peaking resource.  
14 QFs, however, do not run as peaking units that a utility can dispatch only as needed. In  
15 addition, peaking units provide reserves that QFs do not. Because of the significant  
16 differences between peaking power and QF power, paying QFs the avoided costs of a  
17 peaking plant when the QF does not allow the utility to avoid the cost of a peaking plant  
18 violates PURPA.

19           Although in the Joint Utilities' experience QFs do not provide power on the same basis  
20 as peaking plants, it is possible that a QF may offer firm power during peak periods. Under  
21 this circumstance, it may be appropriate to use Heavy Load Hour market purchase prices to  
22 calculate avoided costs for such power. It would not be appropriate to calculate avoided costs  
23 as if the QF were both a market purchase and a peaking resource, as the Decision Outline  
24 proposes.

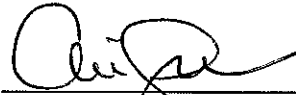
25           Finally, the Decision Outline does not describe what the "capacity contribution" would  
26 be. Additional testimony on these issues will allow the parties to analyze this issue further.



1 additional evidence on those proposals so that the record can be fully developed with respect  
2 to these issues. Because many of the issues are new to this docket, the Joint Utilities believe  
3 that the additional time to review and analyze the proposals would be useful to the parties and  
4 would help ensure that the final proposals comply with PURPA.

5  
6 DATED: October 15, 2009

McDowell & Rackner PC

7  
8 

9 Katherine McDowell  
10 Amie Jamieson  
11 Attorneys for PacifiCorp

PACIFICORP

12 Jordan White  
13 Pacific Power  
14 Legal Counsel  
15 Suite 1800  
16 825 NE Multnomah Street  
17 Portland, OR 97232-2135

18 

19 Lisa Rackner  
20 Attorney for Idaho Power Company

IDAHO POWER COMPANY

21 Barton L. Kline  
22 Senior Attorney  
23 PO Box 70  
24 Boise, ID 83707