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February 3, 2010

## 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 Final Comments of PacifiCorp, PGE, 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

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**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.

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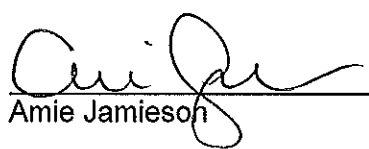
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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1396**

In the Matter of:

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

**FINAL COMMENTS OF  
PACIFICORP, PGE, AND  
IDAHO POWER**

Pursuant to Administrative Law Judge ("ALJ") Patrick Power's Ruling on January 6, 2010, PacifiCorp d/b/a/ Pacific Power, Portland General Electric Company ("PGE"), and Idaho Power Company ("Idaho Power") (together, the "Joint Utilities") submit these Final Comments to the Public Utility Commission of Oregon ("Commission") on the revised Decision Outline ("Revised Decision Outline").

ALJ Power initially issued a ruling reopening this matter to receive comments on a Decision Outline on September 29, 2009 ("Proposed Decision Outline"). In response to the Commission's Proposed Decision Outline, Initial Comments were filed by PacifiCorp, Idaho Power, PGE, Industrial Customers of Northwest Utilities ("ICNU"), Commission Staff ("Staff"), Renewable Energy Coalition, and Biomass One, L.P. (collectively, "Parties"). PacifiCorp, Idaho Power, PGE, ICNU, Renewable Energy Coalition, and the Community Renewable Energy Association then filed Reply Comments. In response to the Parties' comments, ALJ Power issued the Revised Decision Outline and requested additional comments from the Parties. The Energy Trust of Oregon ("ETO") then filed its Initial Comments.

1 I. COMMENTS ON REVISED DECISION OUTLINE

2 A. The Commission Should Not Implement the Revised Decision Outline  
3 Without Further Clarification and Development of the Record.

4 The Joint Utilities recognize and appreciate the fact that the Revised Decision  
5 Outline reflects some of the comments and concerns raised by the Parties in their Initial  
6 and Reply Comments. The Ruling issuing the Revised Decision Outline does not,  
7 however, address the Joint Utilities' most important concern: the Commission's  
8 implementation of a new avoided cost framework without support of an evidentiary record  
9 and without clarification of unclear but fundamental elements. The Revised Decision  
10 Outline contains new and undeveloped proposals that should be explored in testimony  
11 rather than litigated in a piecemeal fashion in the utilities' avoided cost dockets, as is likely  
12 to be the case without additional process. It should be noted that the majority of the  
13 Parties—Staff, the Joint Utilities, ETO, Renewable Energy Coalition, and Biomass One—  
14 believe that additional procedures are necessary to develop the record on and clarify the  
15 proposals in the Proposed Decision Outline.

16 Moreover, the Revised Decision Outline contains elements that may violate the  
17 Public Utility Regulatory Policies Act ("PURPA"). As discussed below and in the Joint  
18 Utilities' prior comments, the Commission's proposal to allow renewable qualifying  
19 facilities ("QFs") to choose among two different avoided costs streams is likely inconsistent  
20 with PURPA's mandate that QFs be paid no more than the avoided costs of alternative  
21 energy. The Commission should not adopt a new avoided cost framework that not only  
22 has no support in the record, but may also violate PURPA.

23 The Joint Utilities reiterate their recommendation that the Commission make no  
24 changes to the Commission's avoided cost policies and the utilities' currently-employed  
25 resource sufficiency/deficiency calculations until it has appropriately developed the record  
26 on the new issues raised in the Revised Decision Outline. To adopt the Revised Decision

1 Outline at this point would lead to confusion, additional litigation in different contested  
2 cases, and potential PURPA violations.

3 **B. Specific Comments on Revised Decision Outline.**

4 The Joint Utilities provide the Commission with the following comments on the  
5 Revised Decision Outline. These comments relate to the changes from the Proposed  
6 Decision Outline to the Revised Decision Outline, and to additional issues raised in the  
7 Parties' Reply Comments. The Joint Utilities have previously addressed the unchanged  
8 aspects of the Decision Outline in their Opening and Reply Comments, and continue to  
9 support those comments.

10 **1. Removal of provisions setting avoided costs based on gas peakers.**

11 The Joint Utilities support the Commission's removal of the provisions of the  
12 Proposed Decision Outline that would have used gas peakers to determine avoided costs  
13 and resource sufficiency under some circumstances. As discussed in the Joint Utilities'  
14 Initial Comments, utilities cannot dispatch power from QFs in the same way they can from  
15 peakers, so it would be inconsistent with PURPA to use peakers as the relevant avoided  
16 cost resource.

17 **2. The Commission will allow updates at other times if the proponent  
18 can show that significant changes in avoided costs have occurred.  
19 Changes in factors affecting avoided costs (such as new market price  
forecasts or revised new resource dates) are not significant just  
because they are included in a new IRP filing.**

20 The Revised Decision Outline contains a new provision specifying that the  
21 Commission will allow updates at times other than the currently scheduled integrated  
22 resource plan ("IRP") updates if the proponent can show that significant changes in  
23 avoided costs have occurred. The Joint Utilities generally support this provision, but note  
24 areas that will require clarification. Namely, the Revised Decision Outline does not  
25 explain, and the Parties have not had an opportunity to provide evidence on, the factors  
26 that would be eligible for consideration in this analysis. Similarly, the Commission should

1 explain how it would evaluate whether a change is “significant” prior to implementing this  
2 provision.

3           **3. For partially acknowledged plans or acknowledged plans with a range**  
4           **of on-line years for the next major resource acquisition, the**  
5           **Commission will indicate how the utility shall determine avoided**  
6           **costs.**

6           The Joint Utilities support the Commission’s recognition that it must determine how  
7 to evaluate the resource sufficiency period if the utility’s IRP includes a range of on-line  
8 years for its next major resource or the IRP has been partially acknowledged. The Joint  
9 Utilities request that the Commission allow the Parties an opportunity to develop the  
10 record on this issue. This element of avoided cost determination may require that the  
11 Commission explain, with necessary detail, how the utility is to determine resource  
12 sufficiency/deficiency dates in the IRP acknowledgment order.

13           Similarly, the Commission should also clarify how it will calculate avoided costs of  
14 renewable resources if the utility includes a range of capital costs in its IRP.

15           **4. For a proposed renewable QF (eligible under the RPS) in which the**  
16           **developer will cede RECs over to the utility, the proposed QF may**  
17           **choose an avoided cost stream based on the avoided costs of the**  
18           **major renewable acquisition.**

18           The Commission’s proposal to allow a renewable QF that will cede its renewable  
19 energy certificates (“RECs”) to the utility to choose either a major renewable resource or a  
20 gas CCCT as the basis for avoided costs is inconsistent with PURPA and should not be  
21 implemented. PURPA requires that costs paid to QFs may not exceed the “incremental  
22 cost of alternative electric energy,” which is defined as “the cost to the electric utility of the  
23 electric energy which, but for the purchase from such cogenerator or small power  
24 producer, such utility would generate or purchase from another source.” 16 U.S.C. §  
25 824a-3(b), (d). The Commission’s proposal would calculate avoided costs for a renewable  
26 QF that cedes its RECs not on the basis of the energy that the utility will be avoiding, but

1 on the basis of whichever avoided cost stream is more advantageous to the QF. PURPA  
2 does not allow QFs to decide for themselves which type of alternative energy the utility will  
3 be avoiding by purchasing from the QF.

4 While ICNU supports renewable QFs' ability to choose between avoided cost  
5 streams, it appears that ICNU believes a renewable QF "chooses" between the avoided  
6 cost streams when it decides whether to cede RECs to the utility. ICNU Reply Comments  
7 at 4. ICNU states that "If the renewable QF selects the renewable avoided cost option  
8 (and sells its RECs to the utility), then the renewable QF should be assumed to replace a  
9 renewable resource." *Id.* This statement appears to differ from the provision in the  
10 Decision Outline that seems to allow QFs that have already ceded RECs to the utility to  
11 choose one of two avoided cost streams. (For renewable QFs that cede RECs to the  
12 utility, "the proposed QF *may choose* an avoided cost stream based on the avoided cost of  
13 the major renewable acquisition." Decision Outline at 1 (emphasis added)). The  
14 confusion surrounding this fundamental element of the Revised Decision Outline shows  
15 that additional process and clarification is necessary prior to implementation.

16 The Joint Utilities also note that PURPA's purchase mandate applies only to  
17 energy from QFs, not to RECs. PURPA therefore does not require utilities to purchase  
18 RECs from QFs or mandate a level of compensation for RECs. As a result, the  
19 Commission should disregard the Renewable Energy Coalition's proposal to add a  
20 premium to renewable avoided cost prices. The Commission should also disregard  
21 ICNU's apparent suggestion that renewable QFs can unilaterally decide to cede RECs to  
22 the utility.

23 To resolve the inconsistencies with PURPA described in this section, the Joint  
24 Utilities propose that the Commission eliminate renewable QFs' ability to choose their  
25 avoided cost stream. If the Commission finds that renewable QFs that cede RECs avoid  
26 different costs than QFs that do not cede RECs, and that such a finding is consistent with



1 PURPA, the QF ceding RECs should be required to receive the avoided cost stream  
2 based on the cost of the next major renewable resource. QFs not ceding RECs should  
3 receive avoided costs based on the cost of a gas CCCT. If the utility has no major  
4 renewable resource acquisition included in its IRP, all QFs should receive avoided costs  
5 based on the cost of a gas CCCT.

6 **5. If a renewable QF chooses avoided costs based on the utility's next**  
7 **major renewable resource acquisition, the deficiency date and**  
8 **resource costs used in the calculation must be based on that major**  
9 **renewable resource acquisition; conversely, if the renewable QF**  
10 **chooses avoided costs based on an avoidable Gas CCCT, the**  
11 **deficiency date and resource costs used must be based on that Gas**  
12 **CCCT.**

13 The Joint Utilities agree that in order to comply with PURPA, the  
14 sufficiency/deficiency periods must be consistent with the calculation of avoided costs. The  
15 Joint Parties recommend that the Commission define the term "avoidable" as used in this  
16 provision and explain at what point a gas CCCT is no longer "avoidable." For example, if  
17 the next major resource acquisition is a gas CCCT, but the Company has already entered  
18 into a contract for the acquisition, there is a question regarding whether this resource is  
19 avoidable.

20 **C. Comments on ICNU's Proposal Regarding RPS Requirements in Other**  
21 **States.**

22 The Ruling also requested comments on ICNU's proposal that for renewable QFs  
23 that would meet a renewable portfolio standard requirement in another state in which the  
24 utility provides service or a federal RPS, the avoided cost should be based on the costs of  
25 the renewable resource. The Joint Utilities do not object to this provision, subject to the  
26 Joint Utilities' comments above regarding renewable QFs and RECs.

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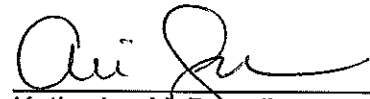
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**II. CONCLUSION**

The Joint Utilities continue to request that the Commission establish procedures to develop the record on and clarify the provisions proposed in the Revised Decision Outline. In the interim, the Commission should retain the current avoided cost methodology to prevent the confusion, uncertainty, and additional litigation that could result from implementing an undeveloped and unsupported methodology.

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