

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1401**

Investigation into Interconnection of  
PURPA Qualifying Facilities With  
Nameplate Capacity Larger Than  
10 Megawatts to a Public Utility's  
Transmission or Distribution System.

STAFF'S OPENING COMMENTS

Pursuant to Administrative Law Judge (ALJ) Wallace's Prehearing Memorandum issued May 12, 2009, staff of the Public Utility Commission of Oregon (staff) submits its Opening Comments in this proceeding.

**1. Background**

The purpose of this docket is to develop policies and procedures to govern the interconnection of large Public Utility Regulatory Policies Act (PURPA) Qualifying Facilities (QF) to the public utilities electrical systems pending adoption of final rules for these generators. The Public Utility Commission of Oregon (Commission or PUC) ordered the utilities to start with the interconnection procedures and agreements adopted by the Federal Energy Regulatory Commission (FERC) <sup>1</sup> for FERC jurisdictional large generator interconnections and to file red-line edited versions of those documents including all the changes that the utilities believed necessary for this purpose. Subsequently, in her Ruling issued February 12, 2009, ALJ Wallace suspended the schedule for submission of draft interconnection procedures and agreements for QFs between 10 MW and 20 MW, and further directed that this docket should proceed to create such agreements and procedures for QFs larger than 20 MW.

Staff's Opening Comments address generally the issue of using the FERC-approved large generator procedures and agreements as a starting point and note the major areas where the agreements and procedures necessarily will differ. Staff appreciates the effort of the utilities but important issues that are currently unresolved in staff's opinion are:

1. Can a QF receive any sort of compensation for network upgrades that they have paid for that a subsequent QF may be able to use for their interconnection?
2. How and where is the point of delivery determined?
3. Can an Interconnection Agreement be automatically renewed on a year to year basis after the term of the initial agreement has expired?
4. Is there a role for a Joint Operating Committee?

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<sup>1</sup> FERC's adopted interconnection standards apply to facilities larger than 20 MW.

Staff also comments upon whether the agreements and procedures that result from this docket should be filed as tariff filings or as compliance filings. Staff will then set forth the specific changes contained in the red-lines that staff disagrees with or will request clarification about from the utilities at the upcoming workshop.

## **2. General Discussion of Selected Matters**

### *A. Staff supports using the FERC-forms as a starting point*

Staff strongly supports the concept of building upon interconnection procedures and agreements already adopted and in use by the utilities and large generators at the federal level. It both saves development time and effort and makes for fewer unique and different procedures and agreements for utilities and QF developers to be familiar with. The area of greatest difference between the FERC rules for FERC jurisdictional large generator interconnections and PURPA QF requirements is in who pays for network upgrade costs that may be required to transport the QF power to where it can be used. Article 11.4 of the FERC Large Generator Interconnection Agreement (LGIA) allows the large generator interconnection customer to recover over time through transmission credits the network upgrade costs incurred to interconnect its generation facility. However, both Idaho Power and PacifiCorp have submitted briefs explaining their position that Article 11.4 is contrary to the Oregon Commission's rules and policies because ratepayers should not subsidize QFs. Idaho Power and PacifiCorp's explanatory briefs on this issue seem persuasive but staff reserves the right to take a final position on this matter until it has reviewed what other parties may say on the in their Opening Comments.

### *B. Utilities should strive to create one standard form agreement and procedure*

Staff understands that all three utilities, Portland General Electric (PGE), PacifiCorp and Idaho Power are generally willing to consider consolidating their large QF interconnection procedures and agreements into one set of uniform procedures and agreements. This makes sense to staff, is consistent with the goal of creating a settled and uniform institutional climate for QF interconnection and is beneficial to parties wishing to develop a large PURPA QF in Oregon. Accordingly, Staff proposes that the parties work toward creating a single QF Large Generator Interconnection Agreement (QFLGIA) and a single QF Large Generator Interconnection Procedure (QFLGIP).

### *C. The QFLGIA and QFLGIP should be filed as tariffs*

Staff recommends that each utility file the QFLGIA and the QFLGIP as tariffs, or at least as attachments to tariffs, including all related appendices.

Preliminarily, staff observes that the Commission in its various UM 1129 orders required the utilities to file the QF agreements at issue as essentially a type of "quasi-

tariff.” In Order 05-584, the Commission required the utilities to file the QF standard form contract relating to rates, terms and conditions for QF power with the Commission. Like a tariff, the filed contract would then become effective within 30 days after the date of filing unless the Commission suspended it. The Commission also required the utilities to file revised tariffs that implemented other provisions of the determinations made in the Order. See Order No. 05-584 at 59-60.

Subsequently, in its Order 06-538, the Commission evaluated the compliance of the utilities’ standard QF power purchase contracts filed pursuant to Order 05-584. Similar to its treatment of the contracts in Order 05-584, the Commission ordered the utilities to file revised standard contract forms and declared the contracts would become effective within 30 days unless the Commission suspended them. The utilities were further directed, to the extent necessary, to file revised tariffs that implemented the resolutions made in the Order.<sup>2</sup> See Order 06-538 at 67.

Staff’s counsel advises that the Commission’s handling of the UM 1129 agreements as a type of tariff conforms to general legal principles. In *American Can Co. v. Davis*, 28 Or App 207 (1976), *rev den* 278 Or 393 (1977), Crown Zellerbach Corporation (Crown) challenged a Commission order that had reset contract rates it had negotiated with Pacific Power & Light Company (Pacific). Crown argued that its contract with Pacific fixed its rates and the Commission could not change it. The Court disagreed with Crown, holding that a contract between a utility and customer mean nothing until the Commission adopts it as a tariff. While not necessarily binding on the current situation, the reasoning of *American Can* supports a Commission decision to require the utilities to file the QFLGIA and QFLGIP as tariffs.

### **3. Specific Comments on the Utilities’ Proposed Red-line Edits**

Following are staff’s specific comments on the utilities’ suggested edits for the QFLGIA and the QFLGIP.

#### **A. Portland General Electric**

Unfortunately, PGE did not provide the required explanatory justification for its edits so staff is left to speculate about the reasons for them. Some of the following comments may reflect confusion with the company’s intent rather than necessarily a rejection of the proposed change.

1. In both the QFLGIA and in the QFLGIP, PGE adds a new definition of Net Output that requires a determination of the QF’s Point of Delivery on the utility system.

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<sup>2</sup> Staff observes that, consistent with the UM 1129 Orders’ treatment of contracts, the Commission’s administrative staff has in practice treated the QF power purchase standard form contracts as tariffs by requiring the utilities to file them, like a tariff, with an Advice Filing, including effective dates.

The Point of Delivery is also a new definition that lacks direction, such as specifying who determines the point of delivery and how.

2. The term of the interconnection agreement at Paragraph 2.2 of the QFLGIA should contain language that the term of the agreement is at least 10 years or the term of the PPA, not simply the term of the PPA. This is similar to language proposed by other utilities Staff also proposes that it should be automatically renewable on a year to year basis thereafter if no change has occurred to the QF or to the regulatory environment in which it operates.
3. Staff questions why the utility would eliminate the sentence allowing an interconnection customer to request confidentiality at Paragraph 3.1 in the QFLGIA and does not agree with this change. Also the interconnection agreement should be filed with the PUC.
4. PGE deleted Paragraph 9.65.3 of the QFLGIA concerning reactive power and the QF's ability to receive compensation for operating in a manner that benefits the utility's power factor if requested. There is inadequate justification for this change and it should not be allowed.
5. At Paragraph 9.7.1.2 in the QFLGIA, staff is unsure whether the Open Access Same-Time Information System (OASIS) takes outage information for outages occurring at the distribution voltage level.
6. At Paragraph 14.1 in QFLGIA, staff is unsure who issues the certification that is referenced. PGE should clarify or delete this proposed addition.
7. What is meant by PGE's elimination of the "Liquidated Damages" Paragraph in 18.2 of the QFLGIA?

## **B. PacifiCorp**

1. The addition of a new definition of Net Output raises the same issues as it did in the PGE QFLGIA, namely where is the Point of Delivery, who chooses it and determines the losses to get to it. Perhaps a paragraph or two about this in the body of the procedure or agreement is necessary. PacifiCorp has added this new definition to both the QFLGIA and QFLGIP in Article 1.
2. At Paragraph 2.2 of the QFLGIA, the utility revised language and limited the term of the interconnection agreement to 10 years or the length of the PPA. Staff supports as long of a term as practical for the interconnection agreement, 10 years at least, and further supports automatic year to year renewal of the agreement upon expiration of the initial agreement, provided nothing has changed with the QF or in the regulatory regime to require a modification to the interconnection.
3. At Paragraph 3.1 of the QFLGIA, the executed QFLGIA should be filed with the PUC.
4. In deleting the "Alternate Option" at Paragraph 5.1.2 in the QFLGIA, the company seems to be eliminating a useful benefit to the interconnecting QF without sufficient cause. Staff disagrees with this proposed edit.
5. At Paragraph 6.2 in the QFLGIA, a modification was made to shifting the costs of routine inspections to the interconnection customer. If the PPA had language agreed to by both parties about a schedule for routine inspections paid by the

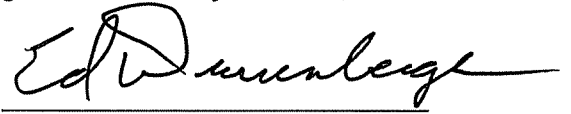
- interconnecting customer that seems appropriate. But unscheduled or out of routine inspections should be at the expense of the party initiating the action.
6. A deletion of Paragraph 9.9 in the QFLGIA, concerning third party users is not well explained. Staff would like to understand this issue in greater detail before accepting this deletion.
  7. PacifiCorp includes a provision to require the QF to be certified at Paragraph 14.1 of the QFLGIA. Staff is uncertain about certification requirements for QFs and asks for further justification before agreeing to this suggested edit.
  8. At paragraph 28.1.4 of the QFLGIA, PacifiCorp eliminates the Joint Operating Committee because it is something that allegedly has not proven to be useful. Staff suggests that further dialog should occur on this subject to clarify this assertion.
  9. A 38.3 of the QFLGIP, the OASIS filing should include distribution level interconnections should they occur.

### **C. Idaho Power Company**

1. Staff recommends Idaho Power adopt the same naming convention for the QFLGIA and QFLGIP as proposed by the other utilities.
2. In the Article 1 Definitions section for both the QFLGIA and the QFLGIP, Idaho Power did not include a definition for “Net Output” as the others utilities did. Staff has reservations about how this term is defined and used by others and will be working with parties in the upcoming workshop to clarify this issue.
3. A definition for “System Stabilizers” has been added to the QFLGIA for the other two utilities. Idaho Power did not make this same choice in its QFLGIA Definitions section. Staff will discuss this difference in the proposed agreements and procedures in the upcoming workshop.
4. At Paragraph 2.2 of the QFLGIA, the company puts a new limit to the term of the interconnection agreement of 10 years or the length of the PPA. Staff supports as long of a term as practical for the interconnection agreement. Further, staff agrees with the company’s proposed automatic year to year renewal provision.
5. The company has removed Paragraph 9.9 of the QFLGIA concerning third party users. Staff would like to understand this issue in greater detail before accepting this proposed edit.
6. Idaho Power eliminated Article 29 of the QFLGIA concerning the Joint Operating Committee. This deletion was made by other utilities and will be brought up for discussion by staff at the upcoming workshop.

This concludes staff's Opening Comments.

Dated at Salem, Oregon, this 8<sup>th</sup> day of June, 2009

A handwritten signature in black ink, appearing to read "Ed Durrenberger", written over a horizontal line.


**Ed Durrenberger**  
Senior Analyst  
Electric and Natural Gas Division

**CERTIFICATE OF SERVICE**

**UM 1401**

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to the following parties or attorneys of parties.

Dated at Salem, Oregon, this 8th day of June, 2009.



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Kay Barnes  
Public Utility Commission  
Regulatory Operations  
550 Capitol St NE Ste 215  
Salem, Oregon 97301-2551  
Telephone: (503) 378-5763

**UM 1401  
Service List (Parties)**

<p><b>*DEPARTMENT OF JUSTICE</b></p> <p>JANET L PREWITT ASSISTANT AG</p>	<p>NATURAL RESOURCES SECTION 1162 COURT ST NE SALEM OR 97301-4096 janet.prewitt@doj.state.or.us</p>
<p><b>CITIZEN'S UTILITY BOARD OF OREGON</b></p> <p>G. CATRIONA MCCrackEN LEGAL COUNSEL/STAFF ATTY</p>	<p>610 SW BROADWAY - STE 308 PORTLAND OR 97205 catriona@oregoncub.org</p>
<p><b>CITIZENS' UTILITY BOARD OF OREGON</b></p> <p>ROBERT JENKS</p>	<p>610 SW BROADWAY STE 308 PORTLAND OR 97205 bob@oregoncub.org</p>
<p><b>CROSSBORDER ENERGY</b></p> <p>R THOMAS BEACH</p>	<p>2560 NINTH ST - STE 213A BERKELEY CA 94710-2557 tomb@crossborderenergy.com</p>
<p><b>DAVISON VAN CLEVE PC</b></p> <p>S BRADLEY VAN CLEVE</p>	<p>333 SW TAYLOR - STE 400 PORTLAND OR 97204 mail@dvclaw.com</p>
<p><b>DEPARTMENT OF JUSTICE</b></p> <p>MICHAEL T WEIRICH ASSISTANT ATTORNEY GENERAL</p>	<p>REGULATED UTILITY &amp; BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 michael.weirich@doj.state.or.us</p>
<p><b>IDAHO POWER COMPANY</b></p> <p>RANDY ALLPHIN</p>	<p>PO BOX 70 BOISE ID 83707-0070 rallphin@idahopower.com</p>
<p>DAVE ANGELL</p>	<p>PO BOX 70 BOISE ID 83707-0070 daveangell@idahopower.com</p>
<p>CHRISTA BEARRY</p>	<p>PO BOX 70 BOISE ID 83707-0070 cbearry@idahopower.com</p>
<p>BARTON L KLINE SENIOR ATTORNEY</p>	<p>PO BOX 70 BOISE ID 83707-0070 bkline@idahopower.com</p>
<p>LISA D NORDSTROM ATTORNEY</p>	<p>PO BOX 70 BOISE ID 83707-0070 lnordstrom@idahopower.com</p>



MICHAEL YOUNGBLOOD SENIOR PRICING ANALYST	PO BOX 70 BOISE ID 83707 myoungblood@idahopower.com
<b>LOVINGER KAUFMANN LLP</b>  JEFFREY S LOVINGER	825 NE MULTNOMAH STE 925 PORTLAND OR 97232-2150 lovinger@lklaw.com
<b>MCDOWELL &amp; RACKNER PC</b>  AMIE JAMIESON ATTORNEY	520 SW SIXTH AVE - STE 830 PORTLAND OR 97204 amie@mcd-law.com
WENDY MCINDOO OFFICE MANAGER	520 SW 6TH AVE STE 830 PORTLAND OR 97204 wendy@mcd-law.com
LISA F RACKNER ATTORNEY	520 SW SIXTH AVENUE STE 830 PORTLAND OR 97204 lisa@mcd-law.com
<b>OREGON DEPARTMENT OF ENERGY</b>  ROBIN STRAUGHAN	625 MARION ST NE SALEM OR 97301-3742 robin.straughan@state.or.us
<b>OREGON PUBLIC UTILITY COMMISSION</b>  ED DURRENBERGER	PO BOX 2148 SALEM OR 97308-2148 ed.durrenberger@state.or.us
<b>PACIFIC POWER &amp; LIGHT</b>  JORDAN A WHITE SENIOR COUNSEL	825 NE MULTNOMAH STE 1800 PORTLAND OR 97232 jordan.white@pacificcorp.com
<b>PACIFICORP OREGON DOCKETS</b>  OREGON DOCKETS	825 NE MULTNOMAH ST STE 2000 PORTLAND OR 97232 oregondockets@pacificcorp.com
<b>PORTLAND GENERAL ELECTRIC</b>  CECE L COLEMAN	121 SW SALMON ST - 1WTC1711 PORTLAND OR 97204 cece.coleman@pgn.com
RANDALL DAHLGREN	121 SW SALMON ST - 1WTC1711 PORTLAND OR 97204 pge.opuc.filings@pgn.com