

JOHN R. KROGER  
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MARY H. WILLIAMS  
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**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

January 3, 2012

Sarah Wallace  
Administrative Law Judge  
PUC Administrative Hearings Division  
550 Capitol Street NE, Suite 215  
Salem, OR 97308

Re: Docket No. UM 1182 – Status Report

Dear Judge Wallace:

As requested, enclosed please find the Staff's Status Report with additional party comments.

Sincerely,

Michael T. Weirich  
Assistant Attorney General  
Business Activities Section

MTW:slg/DM #3157034  
c. all parties

**Status Report to Administrative Law Judge**

**UM 1182**

**January 3, 2012**

## Introduction

On December 12, 2011, Sarah Wallace, the Administrative Law Judge for the UM 1182 proceeding, directed parties to file a status report by January 3, 2012. The format was to be a simple compilation of views expressed by all parties about progress to date in the docket.

On December 14, 2011, Staff circulated its Status Report, which focused in substantial part on the November 18, 2011, workshop. On December 19, 2011, NIPPC circulated its Additions to Staff's Status Report, which provided detail on both points of agreement and points of disagreement with Staff, as well as additional comments. On December 20, 2011, ICNU sent an e-mail to the parties, stating that ICNU was "fine with both Staff's document and NIPPC's additions." Also on December 20, 2011, CUB sent an e-mail to the parties, stating that CUB "supports both Staff and NIPPC's comments." Finally, on December 22, 2011, the utilities – PGE, PacifiCorp, and Idaho Power – circulated Comments, which in large part responded to issues raised in NIPPC's Additions.

The remainder of this document is a compilation of these documents, in the following order:

- 1) Staff's Status Report
- 2) NIPPC's Additions to Staff's Status Report
- 3) ICNU's E-mail
- 4) CUB's E-mail
- 5) Utilities' Comments

## **Staff's Status Report**

## Staff's Status Report to the Administrative Law Judge

### UM 1182

#### Overview:

Staff organized a half-day workshop on November 18, 2011, in Portland. 28 participants attended, representing Staff, PGE, PacifiCorp, Idaho Power, NIPPC, CUB, and ICNU. Prior to the workshop, Staff circulated a list of factors that might be appropriate for consideration in evaluating the unique risks and advantages of utility benchmark resources (compared to those offered by other bidders, such as independent power producers) in a competitive bid evaluation process.

During the first part of the workshop, participants discussed Staff's list of factors, and then suggested and discussed modifications and additions. During the second part of the workshop, participants narrowed the list down to 12 factors/items for consideration. The group then divided the list into high, medium, and low priority groups, as well as a "checklist" group that an independent evaluator could simply verify. Finally, various parties agreed to develop conceptual frameworks and/or gather and analyze data for most of the items on the consideration list. Parties with assignments are to circulate their work to other parties by January 31, 2012. An all-day workshop is then scheduled for February 9, 2012, in Portland. The next section identifies the party or parties working on each item and the action(s) to be taken with respect to that item.

#### Assignments for High Priority Items:

##### *Item 1: Cost Over- and Under-Runs:*

NIPPC, PGE, and PacifiCorp will either gather and analyze data and present their results, or provide suggested methodologies to mitigate or eliminate this issue.

##### *Item 2: End Effects/Options at the End of a Resource's Life:*

NIPPC, PGE, and PacifiCorp will make lists of what end effects or options might need to be considered in evaluating competing resources. These parties will also, to the extent possible, suggest specific methodologies to measure/evaluate the end effect/option components.

##### *Item 3: Environmental and Regulatory Risk:*

Staff will suggest a framework for evaluating environmental and regulatory risks, and, to the extent possible, provide numerical examples.

Assignments for Medium Priority Items:

***Item 4: Wind Capacity Factor:***

NIPPC will either gather and analyze data and present its results, or provide suggested methodologies to incorporate this issue into bid evaluations.

***Item 5: Delay:***

NIPPC will either gather and analyze data and present its results, or provide suggested methodologies to incorporate this issue into bid evaluations.

***Item 6: Forced Outage Rates:***

For this item, we need data. NIPPC will contact NERC about the availability of appropriate data.

***Item 7: Fixed O&M Increases over the Resource Life:***

NIPPC has gathered and analyzed data on this issue, and will present their findings to other parties.

***Item 8: Capital Additions over the Resource Life:***

NIPPC will try to perform an analysis using FERC Form 1 data. Other parties expressed reservations about this approach, but will wait for the analysis results before making further comments.

Assignments for Low Priority Items:

***Item 9: Changes in ROE over the Resource Life:***

Staff will provide “back of the envelope” and, if possible, more sophisticated analyses.

“Checklist” Items:

***Item 10: Output/Heat Rate/Power Curve at the Start of Resource Life:***

The independent evaluator can simply verify that these output characteristics have been accurately measured.

***Item 11: Counterparty Risk:***

The independent evaluator can simply verify that counterparty risk has been factored appropriately into the evaluations of competing bids.

***Item 12: Heat Rate Degradation:***

We put this item into the “checklist” group. However, it appears that we made an error in this case. It is Staff’s understanding that NIPPC has gathered and analyzed data for this item. Presumably NIPPC can share its results with other parties by January 31, 2012.

**Further Steps:**

At the February 9, 2012, workshop, participants will discuss the work done on the various items. To the extent that we reach agreement on approaches to some of the items, we will have a group recommendation to the Commission on how the independent evaluator should handle these items. [Note that the form of this recommendation would have to be determined.] To the extent that parties disagree on other items, parties will present a recommendation on how to proceed (e.g. additional workshops, testimony, comments, evidentiary hearing, other).

**NIPPC's Additions to Staff's Status Report**



**NIPPC's Additions to**  
**Staff's Status Report to the Administrative Law Judge**  
**UM 1182**

Overview:

NIPPC agrees with Staff's summary in this section, but would add the following additional background information:

After the Commission re-opened this docket in Order No. 11-001 in January 2011, the parties agreed to divide the RFP Guidelines issues in this case into two phases. Phase I considered issues of the proper size and definition of a "major resource" and retention of the Independent Evaluator through final short list negotiations. After Phase 1, the parties agreed to convene Phase 2 to address the Commission's request for suggestions for Guideline 10(d), which would provide "analytic framework and methodologies that should be used to evaluate and compare resource ownership to purchasing power from an independent power producer."

NIPPC perceived Phase 2 to require more technical analysis, and understood this requirement to be the reason to address Phase 2 second so as not to delay to Commission's inquiry into the other matters based more in policy. Prior to the conclusion of Phase 1, NIPPC began development of its suggestions for Guideline 10(d).

After the Commission issued an order in Phase 1, the parties agreed to begin Phase 2 through workshops. The parties met to first address Phase 2 and Guideline 10(d) on October 25, 2011. The parties discussed general concepts and agreed to convene another workshop where technical personnel would be present to discuss analytical approaches. Per a request from Staff, NIPPC agreed to distribute its proposal for how to address Guideline 10(d) prior to the next workshop. On November 16, 2011, NIPPC circulated a "White Paper," prepared by MRW & Associates, LLC of Oakland, California, which presented approaches for using available national data about utility-owned resources in order to develop methodologies for accounting for potential cost overruns similar to those described in Order No. 11-001.

NIPPC agrees with Staff's overall summary of the November 18, 2011 workshop. However, NIPPC did not perceive there to be consensus among the parties regarding the prioritizations of different categories and stated several objections to some of the categorizations. NIPPC notes that some of the prioritizations were apparently based upon the perceived availability of data rather than the magnitude of the potential cost impacts. In addition, NIPPC heard PacifiCorp and Portland General's concerns regarding the data

to be used to derive methodologies for accounting for potential cost overruns similar to those described in Order No. 11-001.

A clear difference in the overall goal for this phase of the docket was seen in how the different parties articulated how "deliverables" emerging from the docket would be used. PacifiCorp and Portland General repeatedly said that findings that might emerge from the docket would be used at the discretion of the IE assigned to any given RFP.<sup>1</sup> NIPPC's interpretation of the Commission's Order No. 11-001 was for parties to propose tangible, quantitative tools that the IE would be required to employ. NIPPC heard ICNU and CUB at the workshop articulate this same interpretation of the docket's intended goal.

In the spirit of collaboration, NIPPC agreed to analyze many of the categories identified by Staff, and understood the utilities to state they would cooperate in providing necessary data and vice versa. In fact, in response to an informal request by PacifiCorp at the end of the workshop, NIPPC provided the primary dataset used in its White Paper (converted to a more usable format than had been available to NIPPC's consultant). NIPPC provided this dataset to all other parties as well, assuming that they might find it useful.

#### Assignments for High Priority Items:

##### *Item 1: Cost Over- and Under-Runs:*

NIPPC would add that it has provided information on this topic to the group through its White Paper and has provided supporting data sets through its subsequent correspondence.

##### *Item 2: End Effects/Options at the End of a Resource's Life:*

NIPPC would add (1) that it understood that PGE and PacifiCorp would provide the group with models of how they model PPAs of different tenors and (2) that NIPPC agreed to look into the technological obsolescence issue.

##### *Item 3: Environmental and Regulatory Risk:*

NIPPC has no additions to Staff's summary.

#### Assignments for Medium Priority Items:

##### *Item 4: Wind Capacity Factor:*

NIPPC would add that it has provided information on this topic to the group through its White Paper and has provided supporting datasets through its subsequent correspondence.

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<sup>1</sup> Idaho Power, while in attendance, was largely silent during the workshop.

*Item 5: Delay:*

NIPPC agrees with Staff's summary that NIPPC will either gather and analyze data and present its results or provide suggested methodologies to incorporate this issue into bid evaluations. NIPPC's intent is to provide a method by which the reduction in risk to ratepayers from a PPA's liquidated damages provisions is properly considered in an RFP.

*Item 6: Forced Outage Rates:*

NIPPC would add that it understood this data could be obtained from NERC's GADS database. NIPPC noted at the workshop that the GADS database was likely available to the utilities through prior licensing agreements and could be shared provided that (1) the licensing agreements allowed for such sharing and (2) the utilities are willing to share the data with other parties.

*Item 7: Fixed O&M Increases over the Resource Life:*

NIPPC would add that it has provided (1) information to the group about fixed O&M cost increases at utility-owned gas-fired power plants and wind plants to the group through its White Paper and (2) supporting datasets on O&M costs at utility-owned gas-fired power plants through its subsequent correspondence.

*Item 8: Capital Additions over the Resource Life:*

NIPPC would only add that the utilities' past FERC Form 1's were among the items included in its data request. Without the past FERC Form 1's, it is difficult to even attempt to analyze this issue to present it to the other parties.

Assignments for Low Priority Items:

*Item 9: Changes in ROE over the Resource Life:*

NIPPC has nothing to add to Staff's summary on this item.

"Checklist" Items:

*Item 10: Output/Heat Rate/Power Curve at the Start of Resource Life:*

NIPPC's notes indicate that the utilities may have said they were going to perform some analysis on this issue.

***Item 11: Counterparty Risk:***

NIPPC has no additions to Staff's summary.

***Item 12: Heat Rate Degradation:***

Staff is correct that NIPPC has the data to develop an estimate of heat rate degradation to be used to compare against heat rate curves submitted in RFPs for utility-owned generation bids.

**Further Steps:**

NIPPC has nothing to add to Staff's summary in this section.

**ICNU's E-mail**

**From:** Irion A. Sanger [ias@dvclaw.com]  
**Sent:** Tuesday, December 20, 2011 2:32 PM  
**To:** Greg Adams; SCHUE Steve; alex.miller@nwnatural.com;  
ann@annfisherlaw.com; bob@oregoncub.org; Brad Van Cleve;  
catriona@oregoncub.org; cbearry@idahopower.com;  
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wam@mrwassoc.com  
**Subject:** RE: UM 1182: Follow-up to Phone Conference with ALJ

ICNU is fine with both Staff's document and NIPPC's additions.

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**From:** Greg Adams [<mailto:Greg@richardsonandoleary.com>]  
**Sent:** Monday, December 19, 2011 3:49 PM  
**To:** SCHUE Steve; [alex.miller@nwnatural.com](mailto:alex.miller@nwnatural.com); [ann@annfisherlaw.com](mailto:ann@annfisherlaw.com); [bob@oregoncub.org](mailto:bob@oregoncub.org); Brad Van Cleve;  
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**Subject:** RE: UM 1182: Follow-up to Phone Conference with ALJ

Steve,

I attached NIPPC's additional comments, in the same format as Staff's memo circulated last week.

Please contact me with any questions.

Greg Adams  
Richardson & O'Leary PLLC  
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**From:** SCHUE Steve [<mailto:steve.schue@state.or.us>]  
**Sent:** Wednesday, December 14, 2011 10:08 AM  
**To:** [alex.miller@nwnatural.com](mailto:alex.miller@nwnatural.com); [ann@annfisherlaw.com](mailto:ann@annfisherlaw.com); [bob@oregoncub.org](mailto:bob@oregoncub.org); [bvc@dvclaw.com](mailto:bvc@dvclaw.com); [catriona@oregoncub.org](mailto:catriona@oregoncub.org); [cbearry@idahopower.com](mailto:cbearry@idahopower.com); [david.meyer@avistacorp.com](mailto:david.meyer@avistacorp.com); [davidh@norstev.com](mailto:davidh@norstev.com); [denise.saunders@pgn.com](mailto:denise.saunders@pgn.com); [dennis.haider@mdu.com](mailto:dennis.haider@mdu.com); [elaine.prause@energytrust.org](mailto:elaine.prause@energytrust.org); [gordon@oregoncub.org](mailto:gordon@oregoncub.org); Greg Adams; [janet.prewitt@state.or.us](mailto:janet.prewitt@state.or.us); [john.volkman@energytrust.org](mailto:john.volkman@energytrust.org); [lisa@mcd-law.com](mailto:lisa@mcd-law.com); [lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com); [mail@dvclaw.com](mailto:mail@dvclaw.com); [mary.wiencke@pacficorp.com](mailto:mary.wiencke@pacficorp.com); HALE Matt; [mec@eslerstephens.com](mailto:mec@eslerstephens.com); [megan@mp.org](mailto:megan@mp.org); [michael.parvlnen@cngc.com](mailto:michael.parvlnen@cngc.com); [michael.weirich@state.or.us](mailto:michael.weirich@state.or.us); [natalie.hocken@pacficorp.com](mailto:natalie.hocken@pacficorp.com); [oregondockets@pacficorp.com](mailto:oregondockets@pacficorp.com); [pat.ehrbar@avistacorp.com](mailto:pat.ehrbar@avistacorp.com); Peter Richardson; [pge.opuc.filing@pgn.com](mailto:pge.opuc.filing@pgn.com); [rkahn@nippc.org](mailto:rkahn@nippc.org); [rkahn@rdkco.com](mailto:rkahn@rdkco.com); [stefan.brown@pgn.com](mailto:stefan.brown@pgn.com); [stephens@eslerstephens.com](mailto:stephens@eslerstephens.com); [steve.schue@pgn.com](mailto:steve.schue@pgn.com); SATYAL Vijay A; [wendy@nwenergy.org](mailto:wendy@nwenergy.org)  
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**Subject:** UM 1182: Follow-up to Phone Conference with ALJ

Participants in UM 1182:

During the phone conference on December 12, 2011, Sarah Wallace, the Administrative Law Judge in this proceeding, asked for a progress report on January 3, 2012. I have attached Staff's view of the November 18, 2012, workshop, what we are currently doing, and what we aim to accomplish at the February 9, 2012, workshop. Please do the following:

- 1) Read the attached "Staff's view."
- 2) Send to me your disagreements, additions, and other considerations in a separate document, i.e. not a red-line/strike-out version of the attached.

I will then compile all of the documents – Staff's views (attached), and the documents sent to me from other parties – into one document. Within that one document for Ms. Wallace, each of your submitted documents will be intact. So, she will see Staff's views, then each of the other parties' "agreements, disagreements, additions, ..."

Please submit your documents to me by December 29, 2011.

Thanks.

Steve

<<Progress Report to ALJ.docx>>

Steve Schue

Senior Economist

OPUC

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**CUB's E-mail**

**From:** Catriona McCracken [Catriona@oregoncub.org]  
**Sent:** Tuesday, December 20, 2011 3:42 PM  
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**Subject:** RE: UM 1182: Follow-up to Phone Conference with ALJ

CUB supports both Staff and NIPPC's comments.

Catriona

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 Citizens' Utility Board of Oregon  
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**From:** Greg Adams [mailto:Greg@richardsonandoleary.com]  
**Sent:** Monday, December 19, 2011 3:49 PM  
**To:** SCHUE Steve; alex.miller@nwnatural.com; ann@annfisherlaw.com; Bob Jenks; bvc@dvclaw.com; Catriona McCracken; cbearry@idahopower.com; david.meyer@avistacorp.com; davidh@norrstev.com; denise.saunders@pgn.com; dennis.haider@mdu.com; elaine.prause@energytrust.org; Gordon Feighner; janet.prewitt@state.or.us; john.volkman@energytrust.org; lisa@mcd-law.com; Inordstrom@idahopower.com; mail@dvclaw.com; mary.wiencke@pacifcorp.com; HALE Matt; mec@eslerstephens.com; megan@rnp.org; michael.parvinen@cngc.com; michael.weirich@state.or.us; natalie.hocken@pacifcorp.com; oregondockets@pacifcorp.com; pat.ehrbar@avistacorp.com; Peter Richardson; pge.opuc.fillings@pgn.com; rkahn@nlppc.org; rkahn@rdkco.com; stefan.brown@pgn.com; stephens@eslerstephens.com;

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**Subject:** RE: UM 1182: Follow-up to Phone Conference with ALJ

Steve,

I attached NIPPC's additional comments, in the same format as Staff's memo circulated last week.

Please contact me with any questions.

Greg Adams  
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**From:** SCHUE Steve [<mailto:steve.schue@state.or.us>]  
**Sent:** Wednesday, December 14, 2011 10:08 AM  
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**Subject:** UM 1182: Follow-up to Phone Conference with ALJ

#### Participants in UM 1182:

During the phone conference on December 12, 2011, Sarah Wallace, the Administrative Law Judge in this proceeding, asked for a progress report on January 3, 2012. I have attached Staff's view of the November 18, 2012, workshop, what we are currently doing, and what we aim to accomplish at the February 9, 2012, workshop. Please do the following:

- 1) Read the attached "Staff's view."

2) Send to me your disagreements, additions, and other considerations in a separate document, i.e. not a red-line/strike-out version of the attached.

I will then compile all of the documents – Staff's views (attached), and the documents sent to me from other parties – into one document. Within that one document for Ms. Wallace, each of your submitted documents will be intact. So, she will see Staff's views, then each of the other parties' "agreements, disagreements, additions, ...."

Please submit your documents to me by December 29, 2011.

Thanks.

Steve

<<Progress Report to ALJ.docx>>

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**Utilities' Comments**

December 22, 2011

**Comments by  
Portland General Electric Company, PacifiCorp and Idaho Power Company  
on the Status of Docket UM 1182**

Portland General Electric Company, PacifiCorp and Idaho Power Company (the Utilities) believe that Staff's Status Report accurately summarizes the status of the parties' activities. We note that at the November 18, 2011 workshop, the parties acknowledged that there may be other issues not included on Staff's list that should be considered in this docket and that parties were free to raise such other additional issues as the docket proceeds.

The Utilities generally agree that the first three paragraphs of NIPPC's additional background information accurately represent the discussions of the parties, with one exception. While the Utilities believe that parties generally discussed how "deliverables" emerging from the docket might be used, none of the Utilities have formed a position on this issue at this time. We believe it is premature to formulate a position until we have a better understanding of the expected "deliverables" and until the issues outlined by Staff can be fully understood and analyzed.

The Utilities will work in good faith with the other parties to attempt to reach an agreed-upon recommendation for the Commission. We believe that the parties' efforts would benefit from additional direction as to what the Commission expects from the parties. NIPPC indicates that its interpretation of the Commission's Order No. 11-001 was for parties to propose tangible, quantitative tools that the IE would be required to employ. The Utilities agree that this is the general direction and tenor of the workshops held so far; and note that some parties invited outside experts to the November workshop to discuss how such tools might be developed. While the Utilities agree that NIPPC has articulated a plausible interpretation of the direction in Order No. 11-001; the Utilities believe that an equally plausible interpretation of the direction to develop an "analytical framework" could be the development of generic qualitative criteria to be applied to a fact-specific situation e.g. a bid solicitation. The Utilities have differing views of what is the most reasonable approach. However, the Utilities agree that if any determinations made with regard to the items in Staff's Status Report will necessarily require a determination of fact or will rely on expert opinion, then the Commission should provide the highest level of scrutiny to any contested facts or expert opinions before issuing a decision. In such case, the Commission should employ the procedures used in contested case proceedings, including reasonable discovery, testimony and cross-examination, to resolve any issues upon which the parties cannot agree. On the other hand, if the Commission is seeking policy recommendations that do not depend on factual assumptions or expert testimony, then we believe it may not be necessary to employ contested case procedures.

In order to avoid potentially unnecessary fact-finding and contested case procedures, the Utilities request guidance from the Commission with respect to its expectations of an "analytic framework."

## CERTIFICATE OF SERVICE

I certify that on January 3, 2012, I served the foregoing STATUS REPORT upon the parties in this proceeding by electronic mail and by sending a true, exact and full copy by regular mail, postage prepaid, to the parties accepting paper service.

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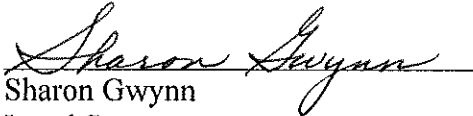
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