

May 21, 2008

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

Oregon Public Utility Commission  
550 Capitol Street NE, Suite 215  
Salem, OR 97301-2551

Attention: Vikie Bailey-Goggins  
Administrator, Regulatory Operations

**Re: Rulemaking to Update Division 29, Docket No. AR 526**

PacifiCorp submits the following comments addressing the Commission's proposed rules to clarify the Commission's intentions regarding the scope of compliant proceedings regarding the negotiation of Qualifying Facility ("QF") power purchase agreements. As described by the Commission, the proposed rule attempts to delineate the dispute resolution process and responsibilities for those parties involved in a specific complaint. PacifiCorp appreciates the opportunity to comment on the Commission's proposed rules to update Division 029.

PacifiCorp recommends the following revisions:

**Proposed OAR 860-029-0100(5)**

PacifiCorp respectfully recommends that the Commission make an editorial change to clarify that the requirements described in subsection (5) and included in a complaint are as described by the QF, and not the public utility. Accordingly, a public utility reserves any rights to respond to any mischaracterizations made by a QF in its complaint.

- (5) The complaint must contain each of the following, as described by the complainant:
- (a) A statement that the Qualifying Facility provided written comments to the utility on the draft power purchase agreement at least 60 calendar days before the filing of the complaint.
  - (b) A statement of the attempts at negotiation or other methods of informal dispute resolution undertaken by the negotiating parties.
  - (c) A statement of the specific unresolved terms and conditions.
  - (d) A description of each party's position on the unresolved provisions.
  - (e) A proposed agreement encompassing all matters, including those on which the parties have reached agreement and those that are in dispute.

**Proposed OAR 860-029-0100(9)**

PacifiCorp respectfully requests that the Commission make editorial changes to subsection (9) of the proposed rule to clarify the procedural process available to the ALJ.

(9) An assigned Administrative Law Judge (ALJ) will conduct a conference with the parties to identify disputed issues, to establish a procedural schedule, and to adopt procedures for the complaint proceeding to decide whether an oral hearing or other procedures (for example, rounds of comments) would be helpful. To accommodate the need for flexibility and implement the intent of this streamlined complaint process, the ALJ may use procedures that vary from those set out in this rule as long as the retains the discretion to adopt appropriate procedures provided such procedures are fair, treat the parties equitably, and substantially comply with the procedures in this rule. Such procedures may include hosting a technical workshop, holding a hearing, or submitting written comments.

**Proposed OAR 860-029-0100(10)**

PacifiCorp respectfully recommends that the Commission clarify that only the counterparties to the agreement have full party status.

(10) Only the counterparties to the agreement ~~negotiating parties~~ will have full party status. The ALJ may confer with member of the Commission Staff for technical assistance.

**Proposed OAR 860-029-0100(12)**

As constituted, subsection (12) provides only the QF with the right to request clarification that the terms of the agreement comply with the Commission's order, or apply for rehearing or reconsideration of the order. PacifiCorp respectfully requests that the proposed rules clarify that the public utility *and* the QF retain such rights.

(12) Within 15 business days after the Commission issues its final order, the public utility must prepare a final version of the power purchase agreement complying with the Commission decision and serve it upon the Qualifying Facility. Within 10 days of service of the final power purchase agreement, the Qualifying Facility and the public utility may sign and file the agreement with the Commission, may request clarification whether the agreement terms comply with the Commission order, or may apply for rehearing or reconsideration of the order. The terms and conditions in the power purchase agreement will not be final and binding until the agreement is executed by both parties.

PacifiCorp appreciates the opportunity to comment on the proposed rules. PacifiCorp requests that the following be added to the service list for this docket:

Oregon Public Utility Commission

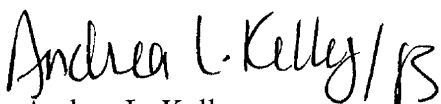
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Please do not hesitate to contact Joelle Steward, Regulatory Manager, at (503) 813-5542 if you have any questions or comments.

Very truly yours,



Andrea L. Kelly  
Vice President, Regulation

cc. Service List for Docket AR-526

## CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of May, 2008, I caused to be served, via E-Mail and Overnight Delivery (to those parties who have not waived paper service), a true and correct copy of the foregoing document on the following named person(s) at his or her last-known address(es) indicated below.

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