1	BEFORE THE PUBLIC	UTILITY COMMISSION
2	OF O	REGON
3	UM 1129	9 (Phase II)
4	In the Matter of	STAFF'S RESPONSE TO PGE'S AND IDAHO
5	PUBLIC UTILITY COMMISSION OF	POWER'S OPENING BRIEFS REGARDING THE COMMISSION'S AUTHORITY UNDER
6	OREGON	ORS 757.215(4)
7	Staff's Investigation Relating to Electric Utility Purchases From Qualifying Facilities.	
8		
9	1. Staff	's Position
10	Staff of the Public Utility Commission of	of Oregon (Commission) responds to the opening
11	briefs submitted by Portland General Electric C	ompany (PGE) and Idaho Power Company
12	(Idaho Power). PGE and Idaho Power each assert, for various reasons, that the Commission	
13	lacks authority to allow the companies' tariffs f	iled in compliance with the Commission's Order
14	05-584 to go into effect "subject to refund" under ORS 757.215(4). See Commission Order 05-	
15	899. For the following reasons, staff agrees that	t ORS 757.215(4) very likely does not apply to
16	the companies' tariff filings. Accordingly, the	Commission should modify its Order 05-899 and
17	strike all references to the compliance tariffs be	ing effective subject to refund under ORS
18	757.215(4). Moreover, the Commission should	revise the paragraph found on page 2 of Order
19	05-899, relating to a provision in the "standard	contract," to read (language to be deleted is
20	shown in strikeout):	
21		name) acknowledge that the rates, terms and and the related tariffs are being investigated
22	by the Oregon Public Utility Commission	on. Upon a decision by the Oregon Public the (electric company name) will notify
23	the seller within ten calendar days. If the	re rates resulting from the investigation are initial period, the (electric company name),
24	pursuant to the investigation, may be rec	
25	date of the revised standard contract and	I tariffs complying with the Commission's ler so chooses to adopt the revised standard
26		and conditions in the tariff approved by the

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1	2. Discussion
2	In Order 05-899, the Commission expressly stated that "the question as to whether these
3	filings are subject to refund would be separately addressed at the outset of the investigation."
4	Order 05-899 at 2. PGE and Idaho Power took up the Commission's invitation and present
5	several arguments in support of their claim that ORS 757.215(4), the statute the Commission
6	relied upon for its refund language, is not applicable to the compliance tariffs at issue.
7	ORS 757.215(4) provides as follows:
8	If the commission is required to or determines to conduct a hearing on a rate or schedule of rates filed pursuant to ORS 757.210, but does not order a suspension
9	thereof, any increased revenue collected by the utility as a result of such rate or rate schedule becoming effective shall be received subject to being refunded. If the rate
10	or rate schedule thereafter approved by the commission is for a lesser increase or for no increase, the utility shall refund the amount of revenues received that
11	exceeds the amount approved as nearly as possible to the customers from whom such excess revenues were collected, by a credit against future bills or otherwise, in
12	such manner as the commission orders.
13	In relevant part, PGE argues that ORS 757.215(4) is unambiguous and does not apply by
14	its "plain language." PGE first asserts that the compliance filings are not tariffs filed pursuant to
15	ORS 757.210. PGE Opening Brief at 3. PGE next turns to various words and phrases used in
16	ORS 757.215(4) and notes that a "qualifying facility" (QF) selling power to a utility is not a
17	"customer" as that term is used in ORS 757.215(4). <i>Id.</i> at 4. PGE further points out the word
18	"refund" does not include the concept of a buyer having to make additional payments to a seller.
19	Id. at 4-5. PGE further notes that 757.215(4) concerns revenue or money obtained by the utility,
20	not money paid by the utility to third-party power producers. <i>Id.</i> at 6.
21	Idaho Power argues that PURPA and FERC regulations preclude the Commission's
22	authority to order refunds under ORS 757.215(4). Idaho Power Opening Brief at 4-7. In
23	relevant part, Idaho Power asserts the federal rules prevent the Commission from "retroactively"
24	changing a QF rate once it is adopted.

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Staff agrees that ORS 757.215(4) very likely does not apply to the compliance filings

made in UM 1129. While staff disagrees with PGE that the compliance tariffs are not "tariffs

1	filed under ORS 757.210," staff concurs that the plain language of ORS 757.215(4) does not
2	seem to readily apply to a utility making third-party purchases from a QF power producer. In
3	particular, the statute cites "any increased revenue collected by the utility" is received subject to
4	refund. Staff concurs with PGE that this language does not seem to include payments made to a
5	QF by a utility.
6	For the record, staff disagrees with the argument presented by Idaho Power. Idaho Power
7	fails to appreciate that the Commission only conditionally approved the rates here, subject to
8	further investigation. There is no issue of retroactively changing final rates as Idaho Power
9	argues.
10	3. Conclusion
11	For the reasons stated, the Commission should amend its Order 05-899 in the manner
12	discussed in the in the Introduction section of this response brief.
13	DATED this 21 <sup>st</sup> day of September 2005.
14	Respectfully submitted,
15	HARDY MYERS
16	Attorney General
17	
18	/s/Michael T. Weirich Michael T. Weirich, #82425
19	Assistant Attorney General Of Attorneys for the Public Utility Commission
20	Staff
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3 I certify that on September 21, 2005, I served the foregoing upon the parties hereto by

4 sending a true, exact and full copy by postage prepaid, regular mail, or shuttle mail, and by

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