

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1998

CORRECTED

Served electronically at Salem, Oregon, 1/29/19, to:

Respondent's Attorney

V. Denise Saunders

Portland General Electric Company

denise.saunders@pgn.com

Complainant's Attorney(s) & Representative(s)

Kenneth E. Kaufmann

ken@kaufmann.law

Re: UM 1998, EVERGREEN BIOPOWER, LLC, an Oregon limited liability company,
Complainant
vs. PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation, Respondent

EVERGREEN BIOPOWER, LLC has filed a complaint against PORTLAND GENERAL ELECTRIC COMPANY. A copy of the complaint is attached and served on Respondent, under ORS 756.512(1). The Commission has assigned Docket No. UM 1998 to this complaint. Please use this number whenever you refer to this case.

The Public Utility Commission must receive an Answer from the Respondent or its attorney by **February 19, 2019**, under OAR 860-001-0400(4)(a). A copy must be served on the complainant.

After the filing of the answer, the PUC will contact the parties to provide information about further proceedings in this matter.

PUBLIC UTILITY COMMISSION OF OREGON

/s/Cheryl Walker

Cheryl Walker

Administrative Specialist 2

Administrative Hearings Division

(503) 378-2849

c: Barbara Parr, barbara.parr@pgn.com

Attachments: Complaint; Notice of Contested Case Rights and Procedures

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at www.puc.state.or.us. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.

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January 28, 2019

Via Electronic Mail

Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, OR 97308-1088
puc.filingcenter@state.or.us

**Re: Evergreen BioPower, LLC, Complainant
Portland General Electric Company, Defendant**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic version of *Evergreen BioPower, LLC's Complaint*.

Thank you in advance for your assistance.

Sincerely,



Ken Kaufmann
Attorney for Evergreen BioPower, LLC

Attach.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM ____

EVERGREEN BIOPOWER, LLC, an Oregon
limited liability company,

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY, an Oregon corporation,

Defendant

COMPLAINT

PURPA; ORS 758.525(2); Breach of
Contract; ORS 469A.135

Pursuant to ORS 756.500 and OAR 860-001-0170, Evergreen BioPower LLC (Evergreen)--a qualifying facility selling to Portland General Electric Company (PGE) under a Schedule 201 power purchase agreement (PPA)--petitions the Public Utility Commission of Oregon (Commission) to resolve disputes that have arisen between Evergreen and PGE regarding: (a) PGE actions preventing Evergreen's qualifying facility from being paid full avoided cost for its entire output; (b) Evergreen's ownership of its Thermal Renewable Energy Certificates (T-RECs); and (c) PGE's refusal to accept T-RECs plus energy as mitigation for underdelivery of bundled RECs. Copies of all pleadings, orders, and correspondences should be served to Evergreen's legal counsel at the address provided at the bottom of the page. Evergreen hereby alleges as follows:

LEGAL FRAMEWORK AND BASES FOR COMMISSION JURISDICTION:

1.

Congress enacted the Public Utility Regulatory Policies Act of 1978¹ (or “PURPA”), among other reasons, to overcome traditional utility reluctance to purchase power from non-utility power producers.² To overcome such reluctance, PURPA requires public utilities to purchase net energy and capacity (called “net output”³) from eligible non-utility power producers, called “qualifying facilities”, or “QFs”.

2.

The Federal Energy Regulatory Commission (or “FERC”) promulgated regulations implementing PURPA. Those regulations require, among other things, that public utilities purchase all energy from a QF delivered to the utility at the utility’s full avoided cost⁴. 18 CFR §292.303(a); *PaTu Wind Farm, LLC v. Portland General Electric Co*, 154 FERC P 61167, ¶36 (“In *PaTu Rehearing*, the Commission [FERC] held that Portland General must take from PaTu its entire net output. . . delivered and to do so at avoided cost rates’.” (emphasis in original)).

3.

Oregon enacted similar statutes to PURPA, codified at ORS Chapter 758. ORS 758.525(2) requires “An electric utility shall offer to purchase energy or energy and

¹ Pub.L. 95-617, 92 Stat. 3117 (enacted November 9, 1978).

² *FERC v. Miss.*, 456 U.S. 742, 750, 102 S. Ct. 2126, 2132-2133 (1982).

³ *Penntech Papers, Inc.*, 48 F.E.R.C. P61,120, at 61,423 (1989).

⁴ Avoided cost is “the incremental cost to the electric utility of electric energy or capacity or both which, but for the purchase from the QF or QFs, such utility would generate itself or purchase from another source” (18 CFR § 292.101(b)(6)).

capacity whether delivered directly or indirectly from a qualifying facility * * * the price for such a purchase shall not be less than the utility's avoided costs."

4.

PURPA delegates to states the task of approving a public utility's avoided cost. In Oregon, avoided costs of electric utilities subject to its jurisdiction are reviewed and approved by the Public Utility Commission of Oregon (the "Commission"). ORS 758.525(1).

5.

PGE is a public utility subject to the must-buy requirements of PURPA and ORS Chapter 858. PGE's standard avoided costs are published in its Commission-approved Schedule 201. PGE is headquartered at 121 Southwest Salmon Street, Portland 97204.

6.

Evergreen is an Oregon limited liability company whose physical address is 141 14th St, Lyons, OR 97358. Evergreen is a subsidiary of Freres Lumber Company, Inc. (Freres), a fourth-generation, family-owned business employing more than 450 persons in Mill City and Lyons, Linn County. Through Evergreen, Freres owns and operates a 10-megawatt (MW) biomass facility at its Lyons mill. Waste heat from the steam turbine-generator is recaptured to use in mill operations (a highly efficient use of energy known as "cogeneration"). Evergreen is a QF under PURPA and ORS Chapter 858, and is eligible for PGE's Schedule 201 standard renewable prices and standard power purchase agreement.

7.

Evergreen executed a Schedule 201, 15-year *Standard Renewable Off-System Non-Variable Power Purchase Agreement* on or about May 16, 2017 (PPA), and began selling output to PGE on or about January 1, 2018.

EVERGREEN'S FIRST CLAIM FOR RELIEF: PGE WRONGFULLY REFUSES TO SETTLE ENERGY DELIVERY BALANCES ON A MONTHLY, NOT DAILY, BASIS.

8.

Evergreen's qualifying facility is located in PacifiCorp's service territory. Evergreen delivers its net output to PGE's system via transmission controlled by the Bonneville Power Administration (or "BPA"). Under this arrangement, Evergreen is an "off-system QF" with respect to PGE, and BPA is a "transmission provider". Under PURPA and ORS Chapter 758, an off-system QF is responsible for obtaining and paying for transmission to deliver its net output to the purchasing utility's system.

9.

To deliver its output to PGE, Evergreen purchased 10 MW of Firm point-to-point (or "Firm PTP") transmission rights from BPA. Evergreen schedules its hourly, whole-MW, deliveries to PGE on a daily basis.

10.

Evergreen almost never produces net output in flat hourly, whole-MW increments. See **Attachment A--Evergreen's Hourly Load Profile**. Deviation between

net output and its schedule is unavoidable because of the PPA requirement to schedule in whole MW blocks.

11.

Over the objection of Evergreen, PGE uses daily settlement (rather than monthly) of hourly deviations between scheduled and delivered net output from Evergreen. At the end of each day, PGE totals all positive and negative hourly deviations between scheduled energy and net output to determine the net Net Output imbalance. The calculation is done separately for LLH and for HLH. For any net positive imbalance (delivered energy in excess of net output), PGE pays Evergreen the applicable Day Ahead Intercontinental Exchange index price at Mid-C (“Mid-C Index Price”). For any net negative imbalance (net output in excess of delivered energy), PGE does not pay Evergreen.

12.

Daily, as opposed to monthly, settlement of Evergreen’s net output imbalance (or deviation) substantially reduces the amount of net output PGE purchases from Evergreen at full avoided cost. In 2018, PGE paid the Contract Price for less than 95% of Evergreen’s net output, and paid the Mid-C Index Price for nearly 976 MWh of Evergreen’s delivered net output.

13.

Using monthly settlement, Evergreen can manage the net output imbalance to nearly zero. In 2018 Evergreen, on average, delivered over 96.5% of its net output on a monthly

basis, achieving 100% net output delivery in May, August, and December. The difference in delivered Net Output depending on daily versus monthly settlement for actual 2018 deliveries is shown in Table 1.

Table 1--Evergreen's 2018 Delivered Net Output: Daily vs. Monthly Settlement.

2018	Net Output	Total Delivered Net Output (DNO)		% of total Net Output (NO) purchased at Contract Price (DNO/NO)	
		MWH			
Month		Daily Settlement	Monthly Settlement	Daily Settlement	Monthly Settlement
Jan	1,629.8	1,419.6	1,421.0	87.10%	94.17%
Feb	3,952.4	3,237.8	3,278.0	81.92%	82.94%
Mar	3,264.1	3,036.7	3,140.0	93.03%	96.20%
Apr	2,965.4	2,664.0	2,744.0	89.84%	92.53%
May	4,035.4	3,821.0	4,035.4	94.69%	100.00%
Jun	5,008.4	4,865.7	4,913.0	97.15%	98.09%
Jul	5,638.8	5,380.7	5,406.0	95.42%	95.87%
Aug	5,584.8	5,463.0	5,584.8	97.82%	100.00%
Sept	5,277.0	5,190.9	5,230.4	98.37%	99.12%
Oct	5,633.7	5,482.2	5,568.0	97.31%	98.83%
Nov	3,574.4	3,425.0	3,465.0	95.82%	96.94%
Dec	4,829.4	4,652.5	4,829.4	96.34%	100.00%
Total:	51,393.6	48,639.1	49,615.0	94.64%	96.54%

14.

PGE is the only one of Oregon's three Commission-regulated electric utilities that does not settle imbalances between scheduled and delivered net output on a monthly basis.⁵ PacifiCorp's Schedule 37 contracts (the analog of PGE's Schedule 201 standard

⁵ For PacifiCorp, see Schedule 37, Addendum W; for Idaho Power Company, see *Oregon Standard Energy Sales Agreement between Idaho Power Company and Kootenai Electric Cooperative*, at 40-41 (March 4, 2014)(Filed in OPUC Docket No. RE-141).

contracts) provide for settlement of such imbalances on a monthly basis. The monthly accounting provisions are contained in its Addendum W, which supplement the standard Schedule 37 contracts where the QF is located off-system.

15.

Evergreen wrote PGE on February 23 and April 13, 2018, proposing PGE adopt PacifiCorp's monthly settlement framework set forth in its Addendum W, or some other arrangement to allow Evergreen to deliver all of its net output to PGE. PGE refused to change its daily settlement regime for Evergreen.

16.

PGE's refusal to allow monthly settlement will cause Evergreen to be underpaid substantially for its net output starting in 2020, when Evergreen's contract price likely will be much greater than the Mid-C Index Price.⁶

Count 1--Violation of PURPA

17.

Complainant re-alleges paragraphs 1-16, above, and incorporates them by reference herein.

⁶ The amount of damages depends upon the difference in delivered net output under daily versus monthly settlement, and upon the difference between the Contract Price and the ICE Mid-Columbia Index Price. During the sufficiency period (2018-2019), the difference between the Contract Price and the ICE Mid-Columbia Index Price (and hence the damages) is typically small. However Evergreen estimates that its annual damages beginning in 2021 will exceed \$75,000.

18.

Since the inception of Evergreen's deliveries, PGE's daily netting requirement has prevented Evergreen from delivering all of its net output to PGE, in violation of PURPA's requirement that the utility purchase all delivered net output at avoided cost.

Count 2--violation of ORS 758.525(2)

19.

Complainant re-alleges paragraphs 1-16, above, and incorporates them by reference herein.

20.

Since the inception of Evergreen's deliveries, PGE's daily netting requirement has prevented Evergreen from delivering all of its net output to PGE, in violation of ORS 758.525(2)'s requirement that the utility purchase all delivered net output at avoided cost.

Count 3--breach of contract

21.

Complainant re-alleges paragraphs 1-16, above, and incorporates them by reference herein.

22.

PGE's refusal to settle schedule imbalances on a monthly basis contradicts PGE's duty under the PPA to accept and pay full-avoided cost for all net output delivered in a monthly billing period.

Count 4--promissory estoppel

23.

Complainant re-alleges paragraphs 1-16, above, and incorporates them by reference herein.

24.

In Docket No. UM 1129⁷, Commission Staff commented on PacifiCorp's and PGE's proposed methods for settlement of energy delivery imbalances. See Staff Exhibits 2200, 2201, and 2202 in Docket No. UM 1129 (March 24, 2006), attached hereto as **Attachment B**. Staff noted generation/schedule imbalances are "especially problematic for small facilities". Attachment B, page 3, line 9-10. Staff testified that monthly settlement protected PacifiCorp and its ratepayers while providing the QF an incentive to accurately schedule its output across the monthly settlement period. *Id. at 4*, line 4-7.

⁷ *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON; Staff's Investigation Relating to Electric Utility Purchase from Qualifying Facilities.*

25.

Staff initially opposed PGE's proposed Schedule 201 and standard PPA because it was unclear whether PGE would accept and pay avoided cost for net output not matched exactly to the Seller's hourly schedule. Attachment B, page 7, line 6-10.

26.

Then PGE stated in an e-mail to Commission Staff "that the QF will be able to use commercially reasonable efforts to schedule and deliver its Net Output to PGE". See Attachment B, page 11.

27.

PGE's e-mail including the above statement is the kind which would foresee-ably induce the Commission Staff (and QFs in the proceeding) to support its filing.

28.

In reliance upon PGE's representations, Staff and QF parties in the proceeding endorsed PGE's standard off-system contract balancing provisions. Attachment B, page 4, line 15 to page 6, line 8.

29.

Under the legal principle of promissory estoppel, PGE is prohibited from denying monthly imbalance settlements to Schedule 201 off-system QFs, based on its e-mail and related actions in Docket No. UM 1129.

**EVERGREEN'S SECOND CLAIM FOR RELIEF--PGE has wrongfully clouded
Evergreen's Ownership of its Thermal RECs.**

30.

Complainant re-alleges paragraphs 1-7, above, and incorporates them by reference herein.

31.

ORS 469A.130 and ORS 469A.132 create a Thermal Renewable Energy Certificate (or "T-REC"). One T-REC represents 3,412,000 BTU of thermal energy used at a biomass facility for a secondary purpose. T-RECs can be used in lieu of ordinary RECs by electric utilities seeking to comply with Oregon's renewable portfolio standard. ORS 469A.135.

32.

Evergreen's biomass facility creates useful thermal energy used to condition raw logs at the Freres mill in Lyons. Evergreen plans to apply for certification of its T-RECs and sell them, such income comprising an important component of Evergreen's anticipated project revenue.

33.

RECs and T-RECs from a qualifying facility located in Oregon belong to the owner of the qualifying facility unless the owner transfers a certificate of ownership pursuant to a contract. OAR 860-022-0075.

34.

Evergreen's PPA with PGE does not convey any T-RECs.

35.

Nevertheless, in a recent letter to Evergreen, PGE refused to waive ownership of Evergreen's T-RECs during the deficiency period (as defined in its PPA), stating without any basis that such ownership was unsettled as a matter of state law.

36.

To sell its T-RECs, Evergreen must warrant that it owns them and that it has not conveyed them to any other party. PGE's actions have clouded title to any T-RECs that Evergreen may sell during the term of its PGE PPA.

37.

Until this matter is resolved, Evergreen is damaged in the amount of the commercial value of its T-RECs generated by the Evergreen QF.

EVERGREEN'S THIRD CLAIM FOR RELIEF--violation of ORS 469A.135

38.

Complainant re-alleges paragraphs 1-7, and 31-34, above, and incorporates them by reference herein.

39.

Under ORS Chapter 469A.132, T-RECs are equivalent to unbundled RECs for purposes of compliance with Oregon's renewable portfolio standards, or RPS.

40.

Under ORS Chapter 469A.145(3), T-RECs do not count against the 20% cap on unbundled RECs used to comply with the RPS so long as they originated from a QF located in Oregon.

41.

PGE therefore is not harmed if it uses T-RECs (rather than RECs) from an Oregon QF to meet its RPS requirements.

42.

On good faith belief, PGE has used or intends to use language in its non-standard renewable power purchase agreements that requires the seller to replace delivery shortfalls with bundled RECs and does not allow settlement with T-RECs and non-renewable energy.

43.

In response to inquiry by Evergreen, PGE refused to clarify its position whether it will accept accept T-RECs plus non-renewable energy in lieu of bundled RECs when settling underdelivery damages in its renewable energy power purchase agreements.

44.

Because PGE is a major consumer of RECs and T-RECs, PGE's unwillingness to accept T-RECs plus non-renewable energy in lieu of renewable energy with bundled RECs diminishes the value of T-RECs produced by Evergreen, and Evergreen cannot sell

its T-RECs for their optimal value so long as PGE's unequal treatment of T-RECs persists.

45.

PGE's practice of requiring qualifying renewable generators selling power to PGE to settle underdeliveries of renewable energy using bundled RECs and not T-RECs plus unbundled energy violates SB 1547 (2016) by failing to give value to T-RECs arising from Oregon qualifying facilities.⁸

RELIEF REQUESTED


WHEREFORE, Complainant prays for a judgment against Defendant as follows:

1. On Complainant's First Claim for Relief, an order:
 - a. declaring PGE's daily settlement of imbalances violates PURPA;
 - b. declaring PGE's daily settlement of imbalances violates ORS 758.525(2);
 - c. declaring PGE's daily settlement of imbalances violates the PPA;
 - d. declaring PGE's daily settlement of imbalances violates its promise to Staff in Docket No. UM 1129;
 - e. requiring PGE to balance Evergreen's deliveries on a monthly (not daily) on- and off-peak basis commencing January 1, 2019, or such other order permitting Evergreen to be paid full avoided cost for its entire delivered net output; and

⁸ See, also ORS 757.654.

- f. granting such other relief the Commission determines appropriate.
2. On Complainant's Second Claim for Relief:
- a. a declaration that Evergreen's PPA does not convey T-RECs to PGE;
 - b. an order requiring PGE waive any claim to Evergreen's T-RECs; and
 - c. such other relief the Commission determines appropriate.
3. On Complainant's Third Claim for Relief:
- a. a declaration that, if PGE has contractually agreed to accept bundled RECs in payment of underdelivery damages, it must also, at the paying party's election, accept an equivalent amount of non-renewable energy and T-RECs from a qualifying facility located in Oregon; and
 - b. such other relief the Commission determines appropriate.

Dated this 28th day of January 2019.

By: 
Kenneth E. Kaufmann, OSB 982672
Attorney for Evergreen BioPower, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of January 2019, a true and correct copy of the foregoing COMPLAINT by Evergreen BioPower, LLC was served by ELECTRONIC MAIL, to:

David F. White
Associate General Counsel
Portland General Electric Company
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
Telephone: (503) 464-7701
david.white@pgn.com



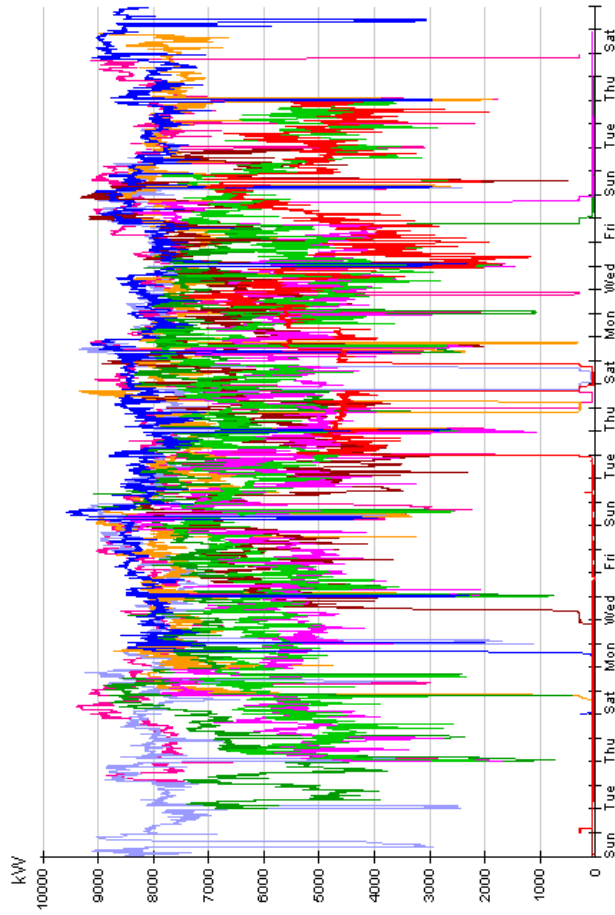
Kenneth E. Kaufmann, OSB 982672
Attorney for Evergreen BioPower, LLC

Attachment A--Evergreen's Hourly Load Profile



Monthly Profiles

Account: EVERGREEN BIOPOWER_LLC



- January 2018
- September 2018
- February 2018
- March 2018
- April 2018
- May 2018
- June 2018
- July 2018
- August 2018

CASE: UM 1129
WITNESS: Brown

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 2200

Direct Testimony

March 24, 2006

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Dr. Stefan Brown. My business address is 550 Capitol Street NE,
4 Suite 215, Salem, Oregon 97301-2551.

5 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
6 **EXPERIENCE.**

7 A. My Witness Qualification Statement is found in Exhibit Staff/2201.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. My testimony addresses Issue 14 and Issue 3.b. dealing with provisions of
10 PacifiCorp's and Portland General Electric's (PGE's) contracts for purchase of
11 off-system Qualifying Facility (QF) power.

12 **Q. DID YOU PREPARE AN EXHIBIT FOR THIS DOCKET?**

13 A. Yes, I prepared Staff Exhibit 2202.

14 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

15 A. My testimony is organized as follows:

16	Issue 14, Tariff provisions for purchases from off-system QFs	2
17	Issue 3b, Cost and contractual provisions necessary to purchase from	
18	off-system QFs	9

1 **Q. ARE THE PRODUCTION BALANCING PROVISIONS IN PACIFICORP'S**
2 **POWER PURCHASE AGREEMENT FOR OFF-SYSTEM QFS**
3 **APPROPRIATE?**

4 **A. Yes. Under federal PURPA, utilities are required to purchase the net output of**
5 **a QF, but no more than the net output, at avoided cost. While scheduling**
6 **convention only allows for scheduling whole megawatts, facilities do not**
7 **generate energy in one-MW unit increments. Additionally, the nameplate rating**
8 **of facilities is not necessarily in whole megawatts. As a result, there may be a**
9 **mismatch between scheduled output and actual generation. This is especially**
10 **problematic for small facilities.**

11 **In its proposed standard contract for off-system QFs, PacifiCorp has included**
12 **an Energy Imbalance Accumulation (EIA) that provides the opportunity for a**
13 **QF to match its scheduled deliveries with its actual net output during off peak**
14 **and on peak periods across the Settlement Period. The QF would net the**
15 **differences between the hourly transmission schedule and net output over the**
16 **Settlement Period. The Settlement Period is initially one month, but it may be**
17 **expanded up to one year at PacifiCorp's discretion.**

18 **Another provision of the EIA is that PacifiCorp will pay for the lesser of**
19 **delivered energy and actual net output for on peak and off peak hours summed**
20 **across the Settlement Period. Utilities are required to purchase the net output,**
21 **but not more than net output, of QFs. If actual energy deliveries exceed net**
22 **output during the Settlement Period, the utility should only be required to pay**
23 **for the QF's net output— the maximum amount of energy that PURPA requires**

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Staff/2200
Brown/6

1 the utilities to purchase. If, instead, net output exceeds energy deliveries
2 during the Settlement Period, the utility should only be required to pay for
3 energy deliveries because that is the amount of power that it receives from the
4 transmitting utility. This provision is designed to protect PacifiCorp and its
5 customers from paying avoided costs for energy it either does not receive or
6 that is in excess of QF net output. In addition, it provides an incentive for a QF
7 to accurately schedule its output across the settlement period.

8 While the excess energy may not be worth the on peak price, it is not without
9 value. Therefore, while not required by PURPA, I recommend that PacifiCorp
10 consider modifying its agreement by adding a provision that states that the
11 company will pay QFs the off-peak price for energy delivered in excess of
12 actual net output in the settlement period.

13 **Q. ARE THE PRODUCTION BALANCING PROVISIONS IN PGE'S POWER**
14 **PURCHASE AGREEMENT FOR OFF-SYSTEM QFS APPROPRIATE?**

15 **A. Yes, but the language in Schedule 201 should be clarified. While PGE's**
16 **contract does not include specific balancing provisions, the contract does**
17 **implicitly include them. In Appendix 2, Section 1.2, PGE defines the "Billing**
18 **Period" as a calendar month. In addition, Section 4.5 of Appendix 2 requires**
19 **that the "seller shall make commercially reasonable efforts to schedule in any**
20 **hour an amount equal to its expected Net Output for such hour."**

21 From these two provisions and an e-mail response by PGE witness Mr. Doug
22 Kuns⁵ I conclude that PGE will allow a QF to follow scheduling convention by

⁵ See Staff Exhibit 2202.

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1 scheduling in whole units even when its expected net output is not in whole
2 units, and that PGE will pay for the scheduled and delivered energy generated
3 by the QF. In the e-mail response, Mr. Kuns stated that it is PGE's "intent as
4 stated in Section 4.5, that the QF will be able to use commercially reasonable
5 efforts to schedule and deliver its Net Output to PGE" and "the scheduling
6 requirements for whole MW increments is acceptable within our proposed
7 agreement, even if the QF production may be higher or lower than the
8 scheduled amount in an hour." See Staff/2202.

9 However, I conclude that there is a conflict in the language between the
10 proposed standard contract for off-system QFs and Schedule 201. Section 1.6
11 of the Standard Contract defines Contract Price as "the applicable price for
12 Delivered Net Output..." This definition applies to the pricing options in
13 Sections 5.1, 5.2 and 5.3. In contrast, in Schedule 201, page 4, PGE states
14 that "pricing options represent the purchase price per MWh the Company will
15 pay for electricity delivered ... up to the nameplate rating of the QF in any hour.
16 Any energy delivered in excess of the nameplate rating shall be purchased at
17 the applicable Off-Peak Prices for the selected pricing option." This implies
18 that PGE will not pay avoided costs for scheduled delivery in an hour greater
19 than nameplate rating.

20 For example, assume that a QF has a nameplate rating of 3.5 MW, generates
21 3.5 MW in each hour, and schedules 3 MW in half of the hours and 4 MW in
22 the remaining hours in the billing period (ignoring on-peak and off-peak periods
23 for purposes of this example). On average, over the billing period the QF

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Brown/8

1 would have scheduled and generated, and the TO would have delivered, 3.5
2 MW per hour. Therefore, the QF may reasonably expect to be paid avoided
3 cost for all of its output. The language in Schedule 201 implies that PGE would
4 pay the avoided cost for 3.5 MW per hour, but would only pay the off-peak
5 price for the "extra" 0.5.MW that was delivered in hours when 4 MW was
6 scheduled and delivered. This apparent conflict in language should be
7 resolved, and the tariff should make clear that PGE will allow balancing within
8 the billing period.

9 **Q. IS IT REASONABLE FOR A UTILITY TO REQUIRE AN OFF-SYSTEM QF**
10 **TO USE FIRM TRANSMISSION FOR DELIVERY OF POWER UNDER A**
11 **STANDARD CONTRACT FOR OFF-SYSTEM QFS?**

12 A. Yes. The utilities have proposed that their standard off-system QF contracts
13 specify the use of firm transmission. If a QF wants to use non-firm
14 transmission to deliver its output to the purchasing utility it may do so, but it
15 would not receive capacity payments and would have to execute a non-
16 standard contract.

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**ISSUE 3b, COST AND CONTRACTUAL PROVISIONS NECESSARY TO
PURCHASE OFF-SYSTEM QF POWER**

**Q. ARE THE COST AND CONTRACTUAL PROVISIONS IN PGE'S AND
PACIFICORP'S POWER PURCHASE AGREEMENTS FOR OFF-SYSTEM
QFS APPROPRIATE?**

**A. Some of the provisions are not appropriate. PGE's implicit balancing
provisions are not appropriate as written. However, PGE has clarified its
intention in an e-mail to Staff.⁶ I recommend that PGE modify the language in
Schedule 201 to clarify its intent to allow for netting of differences between Net
Output and delivered energy across the billing period.**

**Also, consistent with my recommendation under Issue 14 earlier, while not
required by PURPA, I recommend PacifiCorp consider modifying its agreement
by adding a provision that states the company will pay QFs the off-peak price
for energy delivered in excess of actual net output in the settlement period.**

**Q. WILL STAFF BE SUBMITTING A BRIEF DISCUSSING THE
COMMISSION'S JURISDICTION TO APPROVE THESE CONTRACTS?**

**A. No, staff understands that no party is challenging the Commission's jurisdiction
to approve these contracts. As such, staff will not be filing a brief concerning
the Commission's jurisdiction to review and approve these contracts.**

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

⁶ See Staff Exhibit 2202.

CASE: UM 1129
WITNESS: Brown

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 2201

Direct Testimony

March 24, 2006

Docket UM-1129 - Phase II

Staff/2201
Brown/1

WITNESS QUALIFICATION STATEMENT

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NAME: Stefan Michael Brown

EMPLOYER: Public Utility Commission of Oregon

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EDUCATION: Ph.D. Purdue University, West Lafayette, Indiana
Major: Ag. Economics; 1995

M.S. University of Wyoming, Laramie, Wyoming
Major: Economics; 1991

B.S. Oregon State University, Corvallis, Oregon
Majors: Ag./Resource Economics, Animal Science; 1983

EXPERIENCE: Starting in November 1999, I have been employed by the Public Utility Commission of Oregon. Current responsibilities include leading research and providing technical support on a wide range of policy issues for electric and gas utilities.

From March 1996 to November 1999 I worked as a consultant in the energy field working for electric research organizations, electric power exchanges, electric utilities and petroleum producers. Duties included leading research projects on various policy issues involving energy markets and electricity restructuring. I also worked as a consultant in the energy field from January 1986 to August 1989

OTHER EXPERIENCE: From August 1991 through March 1995, I was a graduate research and teaching assistant at Purdue University.

From August 1989 through May 1991 I was a graduate research and teaching assistant at the University of Wyoming.

From August 1990 through May 1991 I was an instructor at the University of Wyoming teaching introductory microeconomics.

CASE: UM 1129
WITNESS: Brown

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 2202

Direct Testimony

March 24, 2006

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Staff/2202
Brown/1

- 1 E-mail received from Mr. Doug Kuns on March 13, 2003.
- 2
- 3 Regarding your telephone question about the out of service area standard contract
- 4 with respect to scheduled and delivered QF power. It is our intent as stated in
- 5 Section 4.5, that the QF will be able to use commercially reasonable efforts to
- 6 schedule and deliver its Net Output to PGE. The Net Output and Nameplate
- 7 Capacity Rating definitions provide the objective measures to assure that the
- 8 Company purchases only the QF's Net Output. Section 4.5 accommodates the
- 9 requirements placed on a QF from a transmitting entity to schedule QF power
- 10 within certain parameters. For example, the scheduling requirements for whole
- 11 MW increments is acceptable within our proposed agreement, even if the QF
- 12 production may be higher or lower than the scheduled amount in an hour. PGE
- 13 will purchase the scheduled and delivered energy.
- 14
- 15 Schedule 201 provides that the Company will purchase in accordance with the
- 16 appropriate agreement, QF energy delivered to the Company's system and made
- 17 available for purchase.

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