

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

**Implementation Issues Under the Public Utility
Regulatory Policies Act of 1978**

Docket AD16-16-000

COMMENTS OF
NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION

The Northwest & Intermountain Power Producers Coalition (NIPPC) appreciates the opportunity to respond to the Commission's invitation to participate in its Technical Conference regarding its implementation of the Public Utilities Regulatory Act, commonly known as PURPA.

NIPPC is a policy advocacy organization representing Independent Power Producers (IPPs), marketers, and service providers active in the Pacific Northwest and Intermountain West. Our footprint includes Idaho, Oregon and Washington State. Collectively, within those three states our members operate approximately 5000 MW of thermal and renewable energy capacity while transacting tens of thousands of megawatt hours across the western interconnection.

It is well known that our corner of the country is far behind in creating an organized regional market. NIPPC has been a vocal supporter of forming a Westwide market since our incorporation in 2002. We look forward to the day when PURPA folds into a narrow band as outlined in Section 210(m) of the Energy Policy Act of 2005.

While substantial progress has been made toward forming organized markets in our region, much work remains to be done and obstacles overcome before the competitive marketplace FERC supports arrives. In the interim, the Pacific Northwest and

Intermountain West remain bastions of monopsony power. Simply put, we essentially reside in a traditional vertically integrated paradigm.

Two examples will serve to underscore the nature of this environment. The following two episodes, one that is still unfolding while the other story has just concluded demonstrate how challenging it is for IPPs to conduct business with the IOUs operating in Idaho, Oregon and Washington.

In 2013, Portland General Electric (“PGE”) selected Abeinsa, an affiliate of the Spanish multinational corporation Abengoa, to build the utility owned 440-MW natural gas-fired Carty Generating Station. The selection was the result of a competitive RFP process and was blessed by Oregon’s PUC, despite concerns raised by other bidders about Abengoa’s creditworthiness after recent credit downgrades by both Standard & Poor’s and Moody’s Investor Service. Unfortunately, shortly after construction began, Abengoa began talks with its creditors to avoid the largest bankruptcy filing ever in Spain.

PGE has since had to step in and take over the construction at the Carty Station, which places ratepayers at risk for having to pay increased prices. While the original bid estimated Carty at \$514 million, which necessitated a 4.8 rate increase to Oregon customers, its true costs are undoubtedly much higher. PGE made a filing with securities regulators estimating a 30 percent cost increase and has signaled that it may attempt to recover cost overruns from its customers. Steve Corson, a spokesperson for PGE, sums up the problem, noting “We felt comfortable, the independent evaluator felt comfortable, and the PUC had also affirmed we used an appropriate process in evaluating the bidding.” In short, PGE chose profits over doing what was best for its customers in Oregon.

In 2003, (“PacifiCorp”) self-built a 525-MW natural gas-fired power plant, Currant Creek project, for a bargain price of only \$350 million. However, in 2012, a Utah jury found that PacifiCorp obtained that bargain in part by “willfully and maliciously misappropriated a trade secret from USA Power” effectively sidestepping the bid USA

Power submitted in PacifiCorp's RFP and building USA Power's project without the developer.¹ Court documents demonstrate that after detailed negotiations and a series of counteroffers with USA Power under a confidentiality agreement, PacifiCorp informed USA Power that it decided to utilize the Oregon Commission's RFP process instead. USA Power submitted a bid, which was not selected, and felt that the result of that RFP process was PacifiCorp choosing itself to build a replica of USA Power's design.

These two episodes, one that is still unfolding while the other story is concluded demonstrate how difficult it is for IPPs to secure contracts with the IOUs operating in Idaho, Oregon and Washington.

In our corner of the country, PURPA serves an indispensable function. The option of developing a project that beats the utilities' marginal cost of energy and leads to a PURPA off-take contract is one reason developers remain active. They know that if they fail to win a bid or negotiate a fair power purchase agreement (PPA) or asset transfer with the utility, they can convert their efforts into a PURPA project.

It bears noting since ultimately the ratepayers are the most interested party, that by definition PURPA contracts come in below the utilities cost of energy. And as consumer advocates will confirm, even the "threat" of competition saves consumers dollars.

In short, PURPA, only where it is viable, creates a safety net for ratepayers and the sole opportunity for entrepreneurs who hope to sell power or projects to IOUs. All this in spite of genuine disinterest on the part of the state regulators and outright hostility on the part of the IOUs.

We think of PURPA challenging utilities' heretofore unchecked privilege to build the next round of capacity as the result of IPPs beating utility benchmark prices. When

¹ USA Power, LLC v. PacifiCorp, No. 20130442, 2016 WL 2866139, at *7 (Utah May 16, 2016) (affirming the jury award of more than \$133 million).

avoided costs are fairly and accurately calculated, the lowest cost provider should always win.

But now that PURPA projects, as congress originally intended, threaten to erode existing utility capacity coupled with declining load from energy efficiency, the stakes are higher. These higher stakes help explain the latest push to “modernize PURPA,” which in turn has led to the Commission’s Technical Conference. To be sure, the phrase “modernize PURPA” is Orwellian oxymoronic doublespeak at its best. Reverting to the bad old days of Samuel Insull and unchecked monopoly and monopsony power is not modernization.

A number of assertions have been made in recent months suggesting that PURPA has become obsolete as a result of new commercial opportunities. There is no basis for these cynical, self-serving claims.

While PURPA as a formalized safeguard against monopsony power could be obsolete, that prospect is theoretical. PURPA, where it functions, is a proven check on utilities’ monopsony market power. In several states in the Pacific Northwest and Intermountain West PURPA is the only reliable pathway for IPPs to deliver ratepayers alternatives to conventional utility-owned generation.

In reviewing claims made by representatives of the ever-expanding Berkshire Hathaway Energy empire before Congress, one is reminded of the adage made famous by the late Senator Daniel Patrick Moynihan: “everyone is entitled to their own opinion but no one is entitled to their own facts.”

The Commission need be aware of the degree to which PURPA’s critics have turned the facts on their heads in arguing for its obsolescence.

One such claim is that competitive procurement policies at state utility commissions offer sufficient opportunities to IPPs such that PURPA is no longer needed. Would that it were so.

The heralded competitive bidding guidelines developed and deployed by the Oregon Public Utility Commission have so far failed to deliver genuine competition. PacifiCorp and Portland General Electric have consistently won nearly every “competitive” bid conducted under its aegis. In fact, 95 percent of the new generating capacity built to serve utility ratepayers has been built by IOUs in the ten years since the OPUC enacted its guidelines.

The Carty Generating Station described earlier emerged from a competitive bid overseen by an Independent Evaluator and run entirely consistent with OPUC policies.

PacifiCorp recently demonstrated how it views the OPUC’s policies by ignoring all of them and proceeding without the Oregon Commission’s acknowledgement to seek renewable capacity on an exclusive build own transfer basis.

The Idaho Commission adopted Oregon’s guidelines as its own but has yet to put them to a test. The last major resource acquisition by Idaho Power was advertised as “competitive” but despite vocal criticism and virtually no meaningful competition led to construction of the 300 MW Langley Gulch gas-fired CCCT unit in 2013.

There is absolutely no basis to claim that competitive procurement policies have made PURPA obsolete.

A similarly *prim face* false claim is that the new Energy Imbalance Market (EIM) run by the CAISO offers IPPs sufficient marketing opportunities that PURPA is no longer necessary.

There are no IPPs connected to the EIM and no mechanism to bring them into the burgeoning energy market. In a vivid indication of what IOUs really think of integrating PURPA generators into the grid, one need only consider Portland General’s strenuous objection to PURPA projects dynamically scheduling into its system, a position

PacifiCorp supports. Furthermore, in a sign of what's not to come, PacifiCorp resists inter-tie bidding for the EIM.

Certainly, a robust market would have to, by definition, include IPPs but there is no sign of progress that the EIM is ready to accommodate non-utility generation any time soon. Simply put, an EIM does not, and is not designed to create a competitive retail market such that PURPA is rendered obsolete. You already have a process under Section 210(m) to reassess the need for PURPA in those competitive retail markets. But in those vertically integrated, traditional, monopoly markets, like the Pacific Northwest, PURPA is needed more than ever.

The very fact that FERC is there as a recourse of last resort, a credible "backstop," for frustrated IPPs to appeal to has mitigated what are often difficult – indeed even hostile -- policy environments at the state level.

FERC's commitment to implementing PURPA as Congress originally envisioned it has been exceptional. The Commission's continued dedication is what originally propelled and, which has since protected PURPA in the Pacific Northwest and Intermountain West. Meanwhile, the Commission's respect for "cooperative federalism" has helped to a meaningful extent blunt ill will amongst most state commissions. Still, the Commission's diplomacy is a work in progress that has yielded mixed results.

It is important to recognize that as a result of FERC's posture that for every case, which has come before the Commission, there are easily ten more that could have made it to the Commission but did not. One reason is that cooperative federalism sometimes spurrs resolution encouraging the otherwise domineering IOU to settle in order to avoid FERC action. More often, however, utilities with access to unlimited ratepayer money to fund their litigious response to PURPA, outlast, outspend and out-lobby the PURPA industry to the point they simply cannot carry on the battle. The irony here, of course, is that the utilities use ratepayer funds to fight PURPA developers who offer the only lower cost alternative to utility ratebased resources. So the ratepayers pay twice, they pay the

utilities' legal bills to fight PURPA development and they pay higher rates for utility sponsored resources than they would for PURPA developed projects.

The volume of litigation over PURPA in Idaho, Oregon and Washington testifies to the resistance IOUs put up to its implementation at the state level. It is important to note, however, that the large volume of PURPA litigation is only the tip of the iceberg as an indicator of the overwhelming resources IOUs have brought to their forty year long mission to repeal PURPA through the back door of state commission litigation.

The unprecedented level of litigation in Idaho reached its apex in the spring of 2013 when FERC, for the first and only time, actually filed a lawsuit against a state commission for its failure to properly implement PURPA. At issue was the point in time when a QF creates a legally enforceable obligation (also known as a LEO) The Idaho Commission had improperly denied LEO status to several wind QFs based on the fact that a contract had not been fully executed by both parties. Prior to the lawsuit, FERC had entered multiple orders declaring that the Idaho Commission's decisions were not in compliance with PURPA. Finally, obviously out of exasperation, FERC sued the Idaho Commission in federal court to stop the Idaho Commission's obstruction of federal law.

The case was settled on the afternoon of Christmas Eve, 2013, with the Idaho Commission and FERC extolling the virtues of PURPA's cooperative federalism and the ability of the state and federal governments to work together to implement PURPA. At the end of the day, however, the Idaho Commission conceded that a LEO could indeed be created by a QF WITHOUT THE CONSENT OF THE UTILITY. Which, of course is the heart of PURPA, because without such a right, PURPA would be a toothless wish list with no practical effect.

Unfortunately, as is evidenced by the Idaho Commission's recent reduction of PURPA contract terms to just two years, the intent and spirit of that settlement has been thrown on the trash heap. Cooperative federalism is a two way street. FERC has done its part by giving the state commissions great leeway in how the many ambiguous terms in PURPA

may be interpreted and implemented. That said, limiting PURPA contracts to just two years eviscerates the act and, once again puts utilities in the driver seat when it comes to protecting their monopsony powers.

In all, more than 80 PURPA cases² have been litigated at the three commissions over the last ten years. These include specific complaints, generic dockets or disputes over tariffs.

Dated at Boise, Idaho, this 7th day of June, 2016.

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² See Attached list of PURPA filings in ID, OR and WA 1996 - current.

Oregon PURPA Filings 2006-2016

Case Type	Filing Date	Last Filing	Case No.	Case Name
General Policy	Apr-2008	Jul-2008	AR 526	OPUC Rulemaking to Update Division 029 Rules
General Policy	Nov-2015	Mar-2016	AR 593	Obsidian Renewables LLC Petition to Amend OAR 860-0290040, Related to Power Purchases by Public Utilities from Small QFs
General Policy	Oct-2010	Dec-2010	DR 45	Petition for Declaratory Ruling by Central Oregon Irrigation District
Rate Filing	Jun-2011	Jun-2014	UE 235	PacifiCorp Revises Schedule 37, Avoided Cost Purchases from QFs of 10,000 kW or Less (Third Party Transmission Costs)
Utility Application	Sep-2011	Oct-2011	UE 241	Idaho Power Application to Lower Standard Contract Eligibility Cap and to Reduce Standard Contract Term
Utility Application	Jan-2012	Aug-2012	UE 244	Idaho Power Co. Request for Approval of Tariff Change Lowering Standard Contract Eligibility Cap for QFs
Rate Filing	Apr-2007	May-2007	UM 1129	Request to Change Avoided Cost Rates
General Policy	Jan-2004	May-2005	UM 1129 Phase I	OPUC Investigation into Electric Utility Purchases from QFs
General Policy	Jul-2005	Sep-2006	UM 1129 Phase I	Compliance Filings
General Policy	May-2005	Aug-2007	UM 1129 Phase II	OPUC Investigation into Electric Utility Purchases from QFs
General Policy	Aug-2007	Nov-2008	UM 1129 Phase II	Compliance Filings
General Policy	Oct-2008	Jun-2011	UM 1396 Phase I	OPUC Investigation Into Resource Sufficiency Pursuant to Order No. 06-538
General Policy	Dec-2011	Apr-2015	UM 1396 Phase II	OPUC Investigation Into Resource Sufficiency Pursuant to Order No. 06-538

Case Type	Filing Date	Last Filing	Case No.	Case Name
General Policy	Nov-2008	May-2014	UM 1401	OPUC Investigation into Interconnection of PURPA Qualifying Facilities With Nameplate Capacity Larger Than 20 Megawatts to a Public Utility's Transmission or Distribution System
General Policy	Dec-2008	Jan-2012	UM 1409	OPUC Investigation to consider adoption of new federal standards contained in the Energy Independence and Security Act of 2007
QF Complaint	Aug-2009	Dec-2010	UM 1441	Farmers Irrigation District v. PacifiCorp
Rate Filing	Aug-2009	Dec-2009	UM 1442	OPUC Investigation to Determine if PacifiCorp's Rate Revision Is Consistent With the PURPA Methodologies and Calculations Required by Order No. 05-584
Rate Filing	Aug-2009	Dec-2009	UM 1443	OPUC Investigation to Determine if PGE's Rate Revision Has Been Consistent With the PURPA Methodologies and Calculations Required by Order No. 05-584
QF Complaint	Sep-2009	Nov-2009	UM 1449	International Paper Co., v. PacifiCorp
QF Complaint	Jul-2011	Aug-2014	UM 1546	Threemile Canyon Wind LLC v PacifiCorp
QF Complaint	Aug-2011	Mar-2012	UM 1552	Tumbleweed Energy II, LLC v. Idaho Power Co.
QF Complaint	Aug-2011	Mar-2012	UM 1553	Western Desert Energy, LLC v. Idaho Power Co.
Rate Filing	Nov-2011	May-2014	UM 1561	PGE Quarterly Non-Firm Avoided Cost Rates
QF Complaint	Dec-2011	Oct-2015	UM 1566	PaTu Wind Farm, LLC v. PGE
QF Complaint	Jan-2012	Jan-2014	UM 1572	Kootenai Electric Coop., Inc. v. Idaho Power Co.
QF Application	Apr-2012	May-2012	UM 1596	Lower Ridge Windfarm, LLC Request for Waiver of the Five-Mile Radius Requirement
General Policy	Jun-2012	Jun-2014	UM 1610 Phase I	OPUC Investigation into QF Pricing and Contracting

Case Type	Filing Date	Last Filing	Case No.	Case Name
General Policy	Apr-2014	Aug-2014	UM 1610 Phase I	Compliance Filings
General Policy	Jun-2014	May-2014	UM 1610 Phase II	OPUC Investigation into QF Pricing and Contracting
General Policy	Jun-2014	May-2010	UM 1610 Phase II	Compliance Filings
Utility Application	Jul-2013	Oct-2013	UM 1664	PGE Application to Update Schedule 201 Qualifying Facility Information
Utility Application	Apr-2015	Pending	UM 1725	Idaho Power Co. Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Change, and for Change in Resource Sufficiency Determination
Rate Filing	May-2015	Jun-2016	UM 1728	PGE Updates to Schedule 201 QF
Rate Filing	May-2015	May-2016	UM 1729	PacifiCorp Schedule 37 Avoided Cost Updates
Rate Filing	May-2015	Jun-2016	UM 1730	Idaho Power Update to Schedule 85 Avoided Cost Rates
QF Complaint	May-2015	Sep-2015	UM 1731	Pacific Northwest Solar, LLC v. Idaho Power Co.
QF Complaint	May-2015	Nov-2015	UM 1733	Gardner Capitol Solar Development, LLC v. Idaho Power Co.
Utility Application	May-2015	Pending	UM 1734	PacifiCorp Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap
QF Complaint	Jun-2016	Pending	UM 1742	Surprise Valley v. PacifiCorp

Oregon Total Cases: 39

Idaho PURPA Filings 2006-2016

Case Type	Filing Date	Last Filing	Case No.	Case Name
FERC Civil Complaint	Mar-2013	Dec-2013	1:13-CV 141 (D. Idaho)	FERC v. IPUC
QF Complaint	Dec-2010	May-2011	AUV-E-10-06	Orem Family Wind v. Avista Corp.
Utility Petition	May-2009	Oct-2009	AVU-E-09-04	Petition of Avista Corp. for an Order Determining Ownership of RECs and Stay of any Requirement to Award RECs to A PURPA Developer
QF Complaint	Dec-2010	May-2011	AVU-E-10-05	Mariah Wind v. Avista Corp.
Civil Complaint	Apr-2010	Settled	CV OC 2007143	Agpower Jerom, LLC v. IPUC
General Policy	Nov-2010	Mar-2011	GNR-E-10-04	Joint Petition Regarding Avoided Cost Issues By Idaho Power, Avista and PacifiCorp. Fourteen Separate PURPA Related Parties intervened and Participated in The Docket.
General Policy	Feb-2011	Jun-2011	GNR-E-11-01	Investigation into Disaggregation
General Policy	Jun-2011	Aug-2013	GNR-E-11-03	Solar and IRP Avoided Cost Methodologies
QF Complaint	Sep-2006	Aug-2007	IPC-E-06-21	Complaint Cassia Wind Park v. Idaho Power
QF Complaint	Jul-2007	Feb-2008	IPC-E-07-13	Complaint Exergy Development Group of Idaho v. Idaho Power
QF Complaint	Apr-2010	Jan-2011	IPC-E-10-11	Complaint Agpower Jerome v. Idaho Power
QF Complaint	Apr-2010	Aug-2010	IPC-E-10-13	Complaint New Energy v. Idaho Power
QF Complaint	Nov-2010	Nov-2010	IPC-E-10-29	Complaint Grouse Creek Wind v. Idaho Power
QF Complaint	Nov-2010	Nov-2010	IPC-E-10-30	Complaint Grouse Creek Wind II v. Idaho Power
QF Complaint	Nov-2010	Oct-2011	IPC-E-10-31	Complaint Fall River Recla v. Idaho Power
QF Complaint	Nov-2010	May-2012	IPC-E-10-32	Complaint Alpha Wind v. Idaho Power

Case Type	Filing Date	Last Filing	Case No.	Case Name
QF Complaint	Nov-2010	May-2012	IPC-E-10-33	Complaint Bravo Wind v. Idaho Power
QF Complaint	Nov-2010	May-2012	IPC-E-10-34	Complaint Charlie Wind v. Idaho Power
QF Complaint	Nov-2010	May-2012	IPC-E-10-35	Complaint Delta Wind v. Idaho Power
QF Complaint	Nov-2010	May-2012	IPC-E-10-36	Complaint Echo Wind v. Idaho Power
QF Complaint	Aug-2011	Jan-2014	IPC-E-11-15	Complaint Grand View Solar v. Idaho Power
QF Complaint	Jan-2012	May-2014	IPC-E-12-01	Complaint Grand View Solar Three and Four v. Idaho Power
QF Complaint	Feb-2012	Jun-2012	IPC-E-12-10	Complaint interconnect Solar v. Idaho Power
Complaint	Mar-2012	Jun-2012	IPC-E-12-11	Rainbow Ranch Petition to Modify Order
QF Complaint	Jul-2012	Dec-2015	IPC-E-12-18	Complaint Hidden Hollow Energy v. Idaho Power
Complaint	Jul-2012	Aug-2012	IPC-E-12-20	Complaint Idaho Power v. Cotton Wood Wind Park et. Al
Complaint	Jul-2012	Aug-2012	IPC-E-12-22	Complaint Idaho Power v. Notch Butte Wind Park
Complaint	Jul-2012	Aug-2012	IPC-E-12-23	Complaint Idaho Power v. Lava Beds Wind Park
Complaint	Nov-2012	Oct-2014	IPC-E-12-25	Complaint Idaho Power v. New Energy Two
Complaint	Nov-2012	Oct-2014	IPC-E-12-26	Complaint Idaho Power v. New Energy Three
QF Complaint	Oct-2013	Apr-2014	IPC-E-13-19	Complaint Idaho Wind Partners v. Idaho Power
Complaint	May-2014	Jul-2014	IPC-E-14-09	Idaho Power Application to Suspend Purchases of Solar QF Power
Complaint	May-2014	Nov-2014	IPC-E-14-13	Idaho Power Application to Suspend Purchases From Certain Solar QF Power Developers
Utility Application	Jul-2014	Feb-2015	IPC-E-14-18	Idaho Power Application to Implement Solar Integration Rate
Utility Application	Jan-2015	Nov-2015	IPC-E-15-01	Idaho Power Application to Modify QF Contract Terms
Civil Complaint	Sep-2011	Jan-2012	SUP-E-11-02	Cedar Creek v. IPUC

Idaho Total Cases: 36

Washington PURPA Filing 2006-2016

Case Type	Filing Date	Last Filing	Case No.	Case Name
General Policy	Apr-2006	Aug-2007	UE-060649	The Commission's Investigation of Public Utility Regulatory Policies Act Standards Pertaining to Smart Metering and Time of Use Rates
General Policy	Feb-2009	Mar-2010	U-090222	Review of PURPA Standards in The Energy Independence and Security Act of 2007
Tariff Revision		Mar-2015	UE-130043, UE-111190, UE-140762	UTC v. PacifiCorp General Rate Case(s)
Tariff Revision		Jan-2016	UE-100467, UE-110876, UE-120436, UE-140188, UE 150204	UTC v. Avista Corp. General Rate Case(s)
Tariff Revision		May-2012	UE-111048	UTC v. Puget Sound Energy General Rate Case(s)
Tariff Revision	Dec-2014	Feb-2015	UE-144160	PacifiCorp proposal to eliminate capacity payments
Utility Application	Dec-2016	Apr-2016	2016 WL 2343036 (Ct. App. Wa.)	PacifiCorp v. Washington UTC (holding that the Commission did not violate PURPA by not allowing recovery of avoided costs)

Washington Total Cases: 8