



# State of Utah

DEPARTMENT OF COMMERCE  
Committee of Consumer Services

To: PacifiCorp  
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Date: 30 April 2003

Subject: PacifiCorp's Draft Power Purchase Agreement for Schedule 38,  
Docket 02-035-T11

The Committee of Consumer Services submits the following comments in response to PacifiCorp's draft Power Purchase Agreement (PPA) for Qualifying Facilities (QFs) with a design capacity greater than 1 MW.

The Committee believes that a PPA that encourages potential sellers to engage in contracts with PacifiCorp will help to keep electricity prices low, and therefore best serve the public interest and the customers it represents. The Committee's overall objective is to ensure that the process provides such encouragement for QFs, while protecting both PacifiCorp and the seller, and without creating undue risk for ratepayers.

- 1 Existing QF Facilities - The PPA is geared towards a seller that "intends to construct" (Page 1, Recitals) a QF facility. A company that has already constructed a generating plant may want to enter into a PPA with PacifiCorp. The proposed PPA should be written in such a way that it could be used for either proposed or previously constructed facilities.

- 2 Incorrect Reference – The paragraph that begins: “Seller estimates that the average annual Net Output ...” (Page 1, Recitals) indicates that a monthly delivery schedule will be provided in Exhibit E. This monthly delivery schedule is actually shown as Exhibit D.
- 3 Dispute Resolution – Section 1.3  
The Committee recommends that PacifiCorp include an arbitration process in the Draft Agreement for resolving any disagreements that may arise between itself and a seller, for example regarding the Company’s exercise of “its reasonable judgment” as to when a Facility is fully operational. Other examples would include the interpretation of what could “reasonably be anticipated” in section 1.7 and whether PacifiCorp’s opinion, given in the context of Section 1.12, is in fact “reasonable”.
- 4 Licensed Professional Engineer – Sections 1.3.1, 1.3.4, 1.3.5, and 1.11.  
The Committee sees no valid reason why PacifiCorp’s judgment, reasonable or otherwise, should be necessary to confirm the competence of a professional engineer licensed in an appropriate discipline in Utah.
- 5 Timeliness of PacifiCorp Response – Sections 1.3.6 and 1.3.8  
The Committee recommends that the Draft Agreement establish target periods within which PacifiCorp will respond to a seller, with appropriate securities and penalties in the event of non-performance.
- 6 Relationships Between Engineers, Attorneys and Sellers – Sections 1.11 and 3.2.6  
How does PacifiCorp propose that a seller will induce an engineer or attorney to provide the specified services absent an economic relationship, association or nexus?
- 7 List of Acceptable Engineers and Attorneys  
PacifiCorp might consider creating a list of engineers and attorneys that it considers acceptable, together with a schedule of those persons’ fees, addresses, and phone numbers, so that sellers can choose from it and know there will be no dispute. The risk could remain that sellers would not regard those listed as independent of PacifiCorp.
- 8 Delay Damages – Section 2.2  
If time is of the essence, what must PacifiCorp perform by specific dates, and what damages shall it be liable to pay the seller in the event of non-performance?
- 9 Generation Interconnection Agreement – Section 4.3 and 6.1  
What is this, and how does it relate to the Draft Agreement?
- 10 Security Deposit – Section 8.1  
The Committee understands the importance to customers as well as to PacifiCorp of the assurance that a seller will perform, but wonders whether this provision may not be unduly onerous. And how can PacifiCorp and the seller control the rate of interest that a banking institution will pay? Are there any alternatives that would be more satisfactory to potential sellers, while still securing PacifiCorp’s interest?
- 11 Default Security – Section 8.2  
The Committee questions the fairness of a provision which leaves the determination of the form, amount and timing of default security entirely in the hands of PacifiCorp. At a

minimum, the Committee recommends that the Draft Agreement specify the conditions under which PacifiCorp could require a seller to put up a security and a formula for calculating the amount.

12 Losses – Section 9.2

The method of determining transformation and transmission losses should be clarified. Theoretically, the metering is on the high side of the transformer connection to the grid and that is the point at which the energy should be determined for payment.

13 Indemnification, etc – Section 12

What about balancing protections for the seller?

14 Insurance – Section 12.5

Isn't this a higher standard than PacifiCorp holds itself to (eg Hunter 1)?

15 Force Majeure – Section 13.1

What is meant in the first sentence of this Section by: "subject, in each case, to the requirements of the first sentence of this paragraph"?

16 Entire Agreement – Section 20.2

And PacifiCorp releases seller?

17 Punctuation, Spelling, etc

Section 1.2 should read: "... between PacifiCorp's readingsof its power ..." and "thirty-four (34) days and may not coincide..."

Section 1.3.3 The first 2½ lines, from "After PacifiCorp has received" to "Professional Engineer stating that," does not read clearly and should be redrafted.

Sections 5.1 and 5.1.1 What does "LD" mean?

Section 5.1.2 Why is this reserved?

Section 11.2 refers to "this section 14." Should it be Section 11?

Section 11.3 refers to "the date set forth in Section 2.3." Should it be Section 2.4?