

1 On October 25, 2012, Administrative Law Judge (ALJ) Grant issued a ruling finalizing an issues
2 list. On December 21, 2012, ALJ Grant issued a ruling adopting a procedural schedule, and
3 dividing the investigation into two phases. On January 30, 2013, ALJ Grant issued a ruling
4 modifying the schedule. ALJ Grant's rulings deferred consideration of the following issues to
5 Phase II:

- 6 1. Should standard contracting process, steps and timelines be revised?
- 7 2. What is the maximum time allowed between contract execution and power
8 delivery?
- 9 3. Should QFs smaller than 10 MW have access to the same dispute resolution
10 process as those greater than 10 MW?
- 11 4. Should off-system QFs be entitled to deliver under any form of firm point to point
12 transmission that the third party transmission provider offers? If not, what type of
13 method of delivery is required or permissible? How does method of delivery
14 affect pricing?
- 15 5. What terms should address security and liquidated damages?
- 16 6. May utilities curtail QF generation based on reliability and operational
17 considerations, as described at 18 CPR §292.304(f)(1)? If so, when?
- 18 7. What is the appropriate process for updating standard form contracts, and should
19 the utilities' recently filed standard contracts be amended by edits from the
20 stakeholders or the Commission?
- 21 8. Should PPAs include conditions that reference the timing of the interconnection
22 agreement and interconnection milestones? If so, what types of conditions should
23 be included?
- 24 9. Should QFs have the ability to elect a larger role for third party contractors in the
25 interconnection process? If so, how could that be accomplished?

26 On February 24, 2014, the Commission issued Order No. 14-058 resolving several issues
in Phase I and deferring consideration of the following four issues to Phase II:

- 23 1. What is the most appropriate methodology for calculating non-standard avoided cost
24 prices? Should the methodology be the same for all three electric utilities operating
25 in Oregon?
- 26 2. When is there a legally enforceable obligation?

1 3. How should third-party transmission costs to move QF output in a load pocket to load
2 be calculated and accounted for in the standard contract?

3 4. How should utilities calculate penalties for a QF's failure to meet the Mechanical
4 Availability Guarantee (MAG)?

5 At a prehearing conference on September 14, 2014, ALJ Pines and Kirkpatrick instructed
6 parties that they intended to revisit the Phase II Issues List established by ALJ Grant and that to
7 the extent a party or parties wished to have the Commission consider an issue in Phase II, the
8 they must explain to the ALJs the significance of the issue and why it is important to have a
9 Commission resolution.

10 **II. Stipulations.**

11 Staff, stakeholders, and the utilities participated in several meetings since Spring 2014 to
12 discuss significant PURPA implementation issues that should be addressed in Phase II and also,
13 to attempt to resolve them. On February 19, 2015, parties submitted two stipulations, one
14 including resolution of several issues ("the Stipulation") and one including a list of five issues to
15 add to the Phase II Issues List (Stipulation re: Issues List). The parties to the Stipulation re:
16 Issues List are Staff of the Public Utility Commission of Oregon (Staff), the Community
17 Renewable Energy Association (CREA), the Renewable Energy Coalition (REC), OneEnergy,
18 Inc., Obsidian Renewables, LLC, Small Utility Business Advocates (SBUA), PacifiCorp,
19 Portland General Electric Company (PGE), Idaho Power Company (Idaho Power), and the
20 Oregon Department of Energy (ODOE) (together "the Stipulating Parties).

21 **III. Agreed-to issues.**

22 If approved, the stipulations would result in all nine of ALJ Grant's previously identified
23 issues being removed from Phase II. The only initially identified issues that would remain in the
24 Phase II issues list are the first three issues that were deferred to Phase II by Order No. 14-058.
25 The Commission already determined to include these three issues in Phase II. The five
26 additional issues agreed to by the Stipulating Parties are set forth below, with an explanation of
why they should be considered in Phase II.

1 **Issue No. 1: Who owns the RECs for a renewable QF's generation during the last**
2 **five years of a 20-year PURPA contract?**

3 In Order No. 05-584, the Commission ordered that standard contracts can last a
4 maximum of 20 years, but that the prices should be fixed for only the first 15 years of the
5 contract.¹ During the last five years of a 20-year standard contract, a QF is eligible for market-
6 based prices only, regardless of whether the purchasing utility is resource sufficient or deficient:
7 [W]e adopt ODOE's recommendation that the maximum term of a contract be
8 raised to 20 years. * * * Given our desire to calculate avoided costs as accurately
9 as possible, and the testimony of several parties that avoided cost should not be
10 fixed beyond 15 years, we are persuaded that the standard contract prices should
11 be fixed for only the first 15 years of the 20-year term.²

12 In Order No. 11-505 regarding renewable avoided cost rates, the Commission held that
13 QFs receiving renewable avoided cost prices for their generation must transmit the associated
14 RECs to the utility when the utility is resource deficient and may keep the RECs when the utility
15 is resource sufficient:

16 During periods of renewable resource sufficiency, the rate will be based on
17 market prices. During periods of renewable resource deficiency, the rate will be
18 based on the renewable avoided cost of the next utility scale renewable resource
19 acquisition in that utility's IRP. The renewable resource QF will keep all
20 associated Renewable Energy Certificates (RECs) during periods of renewable
21 resource sufficiency, but will transfer those RECs to the purchasing utility during
22 periods of renewable resource deficiency[.]³

23 At least one of the Stipulating Parties asserts that the Commission's decision that ownership of
24 RECs passes to the utilities when the utility is resource deficient applies in the last five years of a
25 20-year standard contract. Meaning if the utility is resource deficient during this five-year period
26 in which market-based rates apply, ownership of the RECs should pass to the utility.

27 Other Stipulating Parties believe that under Order No. 11-505, the QFs obligation to
28 transmit RECs to the purchasing utility depends on whether the QF is being compensated for
29 them with deficiency-period avoided cost prices. These parties assert that a QF is only

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31 ¹ Order No. 05-584 at 20.

32 ² *Id.*

33 ³ Order No. 11-505 at 1.

1 compensated for RECs when the avoided cost prices are based on the utility's next avoided
2 renewable resource but is not compensated for them when the avoided cost prices are based on
3 market. These parties assert that even if the utility is resource deficient in the last five years of a
4 20-year standard contract, the QF need not transmit its RECs to the utility because the market-
5 based prices paid to the QF do not compensate the QF for the RECs.

6 Resolution of this issue is important to provide utilities and QFs certainty regarding the
7 value of a 20-year contract. This issue has proved irresolvable by agreement. The Commission
8 will inevitably be asked to resolve it in a future complaint proceeding if the issue is not
9 addressed in Phase II.

10
11 **Issue No 2. Should avoided transmission costs for renewable and non-renewable
proxy resources be included in the calculation of avoided cost prices?**

12 In Order No. 14-058, the Commission ruled that when the proxy resource is on system,
13 there are no avoided third-party transmission costs:

14 We affirm the existing policy that if the proxy resource used to calculate a
15 utility's avoided costs is an off-system resource, the costs of the third-party
16 transmission are avoided, and are therefore included in the calculation of avoided
cost prices. This is the situation for PGE, and it was not contested in these
proceedings.

17 If the proxy resource used to calculate a utility's avoided costs is an on-system
18 resource, there are no avoided transmission costs, and thus the costs of third-party
19 transmission are not included in the calculation of avoided costs prices. This is
the situation for Pacific Power.⁴

20 After the Commission issued Order No. 14-058, OneEnergy and CREA asked the Commission
21 to clarify the language regarding avoided transmission costs for an on-system resource. The
22 Commission denied the request, noting that OneEnergy and CREA "ask for more than
23 clarification of Order No. 14-058 yet fail to demonstrate that reconsideration of the order is
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26 ⁴ Order No. 14-058 at 17.

1 warranted, as opposed to raising any additional or unanswered question(s) in Phase II of this
2 docket.”⁵

3 Some of the Stipulating Parties are unclear as to the meaning of the Commission’s
4 conclusion regarding avoided transmission costs for proxy resources located on
5 PacifiCorp’s system. More specifically, it is not clear whether the Commission
6 concluded that (1) no party demonstrated that PacifiCorp would avoid transmission costs
7 when the resource is on its system, and therefore inclusion of transmission costs in the
8 calculation of avoided cost prices is not appropriate, or (2) even if PacifiCorp would
9 avoid transmission costs associated with an on-system proxy resource by purchasing QF
10 energy, it is not appropriate to include avoided transmission costs in the calculation of
11 avoided cost prices when the proxy resource is an on-system resource.

12 Some of the Stipulating Parties believe that PacifiCorp would incur transmission
13 costs if it built a resource on its system, and accordingly would avoid these costs with QF
14 purchases. Under Order No. 14-058, such costs would not be included in avoided cost
15 prices. Some Stipulating Parties would like clarification as to whether this outcome is
16 what the Commission intended, or whether the Commission intended to rule that
17 transmission costs would not be included in the calculation of avoided cost prices when
18 they are not avoided for an avoidable proxy resource that is on-system, but would be
19 included if the utility would avoid transmission costs. This issue has proved irresolvable
20 by agreement. The Commission may be asked to resolve it in a future avoided cost rate
21 change filing if the issue is not addressed in Phase II.

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23 **Issue No. 3 Should the capacity contribution calculation for the standard**
24 **non-renewable avoided cost prices be modified to mirror any**
25 **change to the solar capacity contribution calculation used to**
26 **calculate the standard renewable avoided cost prices?**

⁵ Order No. 14-229 at (Order Denying Reconsideration).

1 In Order No. 14-058, the Commission adopted Staff's proposal to adjust the
2 capacity payment to QFs during the utilities' deficiency periods to account for the
3 different capacity contributions of different QF resource types.⁶ Subsequently, Staff and
4 other parties to UM 1610 asked the Commission to allow additional process to determine
5 whether the capacity contribution calculation for standard renewable avoided cost prices
6 that was proposed by Staff and adopted by the Commission is flawed. The Commission
7 granted this request.⁷ Parties have submitted opening and reply testimony and briefs
8 regarding the issue, some parties arguing the calculation is flawed and others arguing the
9 calculation does what the Commission intended.

10 The Stipulating Parties ask the Commission to address in Phase II whether the
11 calculation for the capacity contribution adjustment for standard *non-renewable* avoided
12 cost prices that was adopted by the Commission in Order No. 14-058 should be modified.
13 The methodology for calculating the capacity contribution adjustment for non-renewable
14 resources is based on the same logic as that used for renewable resources in that order
15 If the Commission finds that the method is flawed for calculating the capacity
16 contribution credit for standard renewable avoided cost prices, the Commission may
17 reach the same conclusion regarding the method for non-renewable resources. As with
18 the calculation of the capacity contribution adjustment for renewable resources, some of
19 the Stipulating Parties believe the calculation does what was intended by the
20 Commission, and others believe it does not.

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⁶ Order No. 14-058 at 15.

26 ⁷ UM 1610 June 10, 2014 Ruling granting clarification.

1 **Issue No. 4: What is the appropriate forum to resolve disputed inputs and assumptions?**

2 The Commission has stated that “[a]voided cost filings are subject to suspension
3 and the same investigatory process that any tariff filing may undergo.”⁸ Natural gas price
4 forecasts “that the utility use in avoided cost filings are * * * also subject to investigation
5 and full review.” The Commission has “encourage[d] *** interested parties to seek
6 suspension of an avoided cost filing when necessary to address concerns about natural
7 gas forecasts, or any other aspect of a utility’s filing.”⁹

8 Some of the Stipulating Parties have raised issues related to the process used by
9 the Commission to review avoided cost prices. For example, the Commission’s policy is
10 that utilities use inputs from their last acknowledged IRPs as the basis for avoided cost
11 prices:

12 Calculation of each electric utility’s standard avoided costs begins with the utility
13 filing an integrated resource plan (IRP) for a 20-year planning horizon, as
14 required every two years. Within thirty days of the Commission’s
15 acknowledgement of an IRP, the utility makes an avoided cost filing based on its
16 IRP, but updated as appropriate. [OAR 860-029-0080(3).] Consistent with IRP
17 filings, utilities calculate avoided cost for a period of 20 to 25 years.¹⁰

18 Some Stipulating Parties would like the Commission to consider whether it could
19 take certain actions to address the time lag or at least the potential for time lag between
20 the data used to create the IRP inputs and the avoided cost prices. These actions range
21 from minimum filing requirements (MFRs) for information that the utilities must provide
22 when they make avoided cost filings to a suspension and investigation process that runs
23 concurrently with the IRP process rather than after it is concluded.

24 Some Stipulating Parties would also like the Commission to clarify what burden
25 of proof it imposes on utilities and intervenors in the investigation to establish avoided
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25 ⁸ Order No. 05-584 at 36.

25 ⁹ *Id.*, at 36-37.

26 ¹⁰ Order No. 05-584 at 21.

1 cost prices. This issue has proved irresolvable by agreement. Resolution of this issue will
2 provide the Commission and all interested parties with clear guidance regarding how
3 avoided cost inputs and assumptions should be addressed, which should reduce future
4 disputes as well as save all the Commission and the parties time and resources.

5 **Issue No. 5: Do the market prices paid during the Resource Sufficiency period**
6 **sufficiently compensate for capacity?**

7 Some Stipulating Parties rely on FERC's 2014 opinion in *Hydrodynamics Inc., et al.*, to
8 assert that market prices do not adequately compensate QFs during periods the Commission has
9 deemed utilities to be resource "sufficient."¹¹ These parties note that in *Hydrodynamics*, FERC
10 held that "when the demand for capacity is zero, the cost for capacity may also be zero."¹² These
11 Stipulating Parties believe that under *Hydrodynamics*, Oregon's avoided cost prices during
12 sufficiency periods violate PURPA. Some Stipulating Parties note that this is particularly true
13 when a utility acquires large amounts of capacity with consecutive short-term purchases. These
14 Stipulating Parties initially planned to present this issue in response to PacifiCorp's recent
15 avoided cost compliance filing (Advice No. 14-007) that included a 10-year sufficiency period.
16 But these parties agreed to include the issue in Phase 2 to allow PacifiCorp's rates to go into
17 effect without further delay. See Order No. 14-295 at App. A at 2-3. Other Stipulating Parties
18 disagree that a change in the Commission's policy regarding sufficiency period price is
19 warranted by FERC's opinion in *Hydrodynamics*.

20 This issue is significant in part because of the potential outcome. The utilities have
21 lengthy periods of resource sufficiency in the next 15 years. Under existing Commission orders,
22 QFs are not eligible for avoided cost prices based on the costs of the utilities' next avoided
23 resource during periods of resource sufficiency. If a change in the Commission's policy
24 regarding prices for sufficiency period avoided cost prices is warranted by FERC's opinion in

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¹¹ 146 FERC 61193 (2014 WL 61193).

26 ¹² *Id.*, at 10.

1 *Hydrodynamics*, the financial impact could be large. This issue has proved irresolvable by
2 agreement. The Commission will inevitably be asked to resolve it in a future avoided cost rate
3 change proceeding if the issue is not addressed in Phase II. In addition, a number of the
4 Stipulating Parties agreed not to raise this issue as it applied to PacifiCorp's recent avoided cost
5 rate change in exchange for the consideration of this issue on a more generic basis in Phase II.

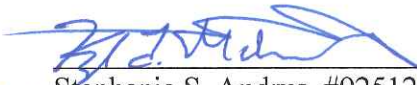
6 **IV. Other agreement.**

7 The Phase II Issues List established by ALJ Grant in 2012 included interconnection
8 process issues (Issues 7A and 7B). The Stipulating Parties agreed that interconnection process
9 issues should be addressed in this in a third phase, or in a separate docket following the
10 completion of Phase II.

11 DATED this 26th day of February 2015.

12 Respectfully submitted,

13
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CERTIFICATE OF SERVICE/SERVICE LIST

I hereby certify that on the 26th day of February 2015, I served the foregoing BRIEF IN SUPPORT OF STIPULATION RE: ISSUES LIST document upon all parties of record in this proceeding by electronic mail only as all parties have waived paper service.

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