

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 593

In the Matter of)	
)	RENEWABLE ENERGY
PUBLIC UTILITY COMMISSION OF)	COALITION AND COMMUNITY
OREGON,)	RENEWABLE ENERGY
)	ASSOCIATION’S RESPONSE
Petition to Amend OAR 860-029-0040,)	COMMENTS
Relating to Small Qualifying Facilities.)	

I. INTRODUCTION

The Renewable Energy Coalition (the “Coalition”) and the Community Renewable Energy Association (“CREA”) (collectively the “Joint QF Parties”) submit these Comments to the Oregon Public Utility Commission (the “Commission” or “OPUC”) responding to written comments filed by the Joint Utilities on August 21, 2018 (the “Joint Utilities Comments”) as well as arguments made at the public hearing held on August 23, 2018. The Commission is simply seeking to adopt rules that accurately reflect its existing Public Utility Regulatory Policies Act (“PURPA”) policies. The Joint Utilities’ recommendations are improper because they seek to make substantive changes to the rules rather than capture the status quo.

II. COMMENTS

Most of the recommendations put forward by the Joint Utilities should be rejected because they exceed the scope of the instant rulemaking. For convenience, we briefly address each section sequentially.

A. The Commission Should Reject the Joint Utilities Proposed Definition of “Avoided Costs”

The Joint Utilities suggest a substantive change to the definition for Avoided Costs, which the Commission should reject. The utilities argue that interconnection costs should not be expressly included because such interconnection costs are not specifically identified in either a federal definition of avoided costs or our state’s statutory definition.¹ Of course, neither the federal regulations or state statutes bar this Commission from including the costs of interconnecting the avoided utility plant in this Commission’s calculation of the utility’s avoided costs, which this Commission has done for many years. Making the Joint Utilities’ proposed change would either substantively change the definition or at the very least allow the Joint Utilities to later argue that a substantive change has been made. Determining consistency with state and federal policies was outside of the scope of the current proceeding, which means the utilities’ argument should be saved for the subsequent PURPA investigation. The Joint QF Parties support Staff’s position, that the definition for avoided cost should remain unchanged.

B. The Commission Should Reject the Joint Utilities Proposal to Change Its Renewable Avoided Cost Rate Policies

The Joint Utilities also suggest it is a foregone conclusion that, because Idaho Power Company (“Idaho Power”) is not subject to Oregon’s Renewable Portfolio Standard (“RPS”) until 2025, it need not offer a renewable rate until that time.² This position is would result in a significant change in the Commission’s policy regarding renewable avoided cost rates. It is extremely unlikely that a utility would wait until the year of RPS compliance to acquire resources needed to avoid violating that statutory

¹ Joint Utilities’ Comments at 2 (citing OAR 860-029-0010(1)).

² Joint Utilities’ Comments at 3 (citing OAR 860-029-0040(6), 0043(2) and 0085(2)).

requirement. The Commission's current policies look to the utility's acknowledged integrated resource plan to determine if the utility is renewable resource deficient, and the existing policy would therefore require Idaho Power to offer a renewable rate in advance of 2025 if the company is plans to acquire renewable resources to meet the 2025 RPS requirement sometime prior to 2025.

C. The Commission Should Reject the Joint Utilities Proposal Regarding Avoided Cost Update Waivers

The Joint Utilities suggest that the Commission should uniformly waive its annual May 1 avoided cost rate update whenever the a post-IRP update would occur within 60 days of the May 1 update.³ This proposal, however, would be a substantive change to existing Commission policy that warrants more vetting.

In 2014 in Phase I of Docket No. UM 1610, the Commission began implementing an annual update to certain major elements of the avoided costs to be initiated on May 1 each year, in addition to the complete avoided cost update the Commission has traditionally implemented following each IRP acknowledgement order. The Commission's current policy expressed in Order No. 14-058 in UM 1610 is: "In the event that an IRP is acknowledged within 60 days of May 1 in a particular year, the Commission will use its discretion at that time to direct a utility to waive its 30-day post IRP update."⁴ The Commission's practice, however, has been inconsistent, and the Commission has also waived the May 1 update when it falls within 60 days of the post-

³ Joint Utilities' Comments at 3-4 (citing OAR 860-029-0080(7)(b)).

⁴ Re Commission Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 25 (Feb. 24, 2014).

IRP rate update. Staff recognizes that the Commission has not consistently followed its own policy, as expressed in its Order No. 14-058, and Staff proposes rules that offer the Commission the option to waive either update when the two update events would fall within 60 days of each other.

The Joint QF Parties do not at this time have a position on which update should be waived. However, the Joint Utilities' proposal to more frequently waive the post-May 1 update rather than the post-IRP update would be a substantive change to the Commission's policy, at least as expressed in its Order No. 14-058. The Joint Utilities' proposal should therefore be considered at a later date, and the Commission should maintain flexibility to waive *either* the May 1 update or the post-IRP acknowledgement update when only one rate update is needed.

D. The Commission Should Reject the Joint Utilities' Proposal Regarding the Avoided Cost Rate Effective Date

The Joint Utilities recommend the insertion of the word "within" into Staff's proposed rule on major rate updates to shorten the time by which an avoided cost update becomes effective after a significant change.⁵ The currently effective version of OAR 860-029-0080(7) states that the updated avoided cost data "will become effective 90 days after filing." Staff believed this rule might be too limiting and recommended removing it entirely. The utilities suggest a compromise would be to adjust the timing to "within 90 days after filing" to allow the Commission flexibility.⁶ The Joint QF Parties believe that the rule language should be retained as set forth in the currently effective rule. Both Staff

⁵ Joint Utilities' Comments at 4-5 (citing proposed OAR 860-029-0085(5)(c)).

⁶ Id.

and the utilities' arguments are beyond the scope of the instant proceeding and should be saved for the subsequent PURPA investigation.

E. The Commission Should *Accept* the Joint Utilities Proposal Regarding the Timing of COD Requirements for Standard Contracts

The Joint Utilities suggest that the proposed rule be revised to be less prescriptive as to the precise language used in a standard contract regarding the allowed time period for a QF to select between contract execution and the scheduled commercial operation date ("COD"). This proposed revision to the proposed rule does not recommend any changes to the underlying policy that a QF may contract for a scheduled COD up to three years after execution of the contract, and the QF may contract for a later scheduled COD for good cause shown.⁷ The Joint QF Parties are not opposed to this proposed change to the language of the proposed administrative rules.

E. The Commission Should *Reject* the Joint Utilities Proposal Regarding the Timing of COD Requirements for Non-Standard Contracts

The Joint Utilities also argue, however, that the right to contract for a scheduled COD three years after contract execution (and later if necessary) is *only* applicable to standard contracts and not applicable to larger QF contracts.⁸ The Joint Utilities point to language in the Stipulation adopted in Order No. 15-130, in an attempt to raise some ambiguity with respect to this issue. The Joint Utilities ignore that the Commission order summarizing the issue does not include any reference to size or the word "standard" anywhere. They also ignore that the Stipulation adopted unequivocally provides, "[t]he QF has the option to select a scheduled commercial on-line date (COD) up to three years

⁷ Joint Utilities' Comments at 5 (citing OAR 860-029-0120(4)).

⁸ Joint Utilities' Comments at 6 (citing OAR 860-029-0120(4)).

from the date the contract is executed” without any reference to size.⁹ The inclusion of the word “standard” refers to burden to establish reasonable delay, which is the QF’s for a standard contract. The utilities cannot credibly claim that what could be the unintentional inclusion of the word “standard” *one time* in one paragraph that does not refer to QF size anywhere else somehow indicates “the Commission has not yet addressed scheduled COD requirements for nonstandard PPAs.”¹⁰

A plain reading of the order, as well as the practice of the Commission and parties, establish that the right to select a reasonable time period between contract execution and scheduled COD applies to both standard and non-standard contracts. Adopting the utilities’ recommendation would impose a drastic and substantive change on the Commission’s PURPA policies and should therefore be rejected.

E. The Commission Should Adopt the Provisions of the Large QF Guidelines, including those that the Joint Utilities Oppose

The Joint Utilities recommend that certain provisions of the Large QF Guidelines, adopted in Order No. 07-360, should not be included in the current rulemaking because consensus was not reached.¹¹ Order No. 07-360 was adopted after a thoroughly contested case, and the Commission should not decide to abandon any aspects of the order simply because the utilities are unsatisfied with the resulting policy. Essentially, the Joint Utilities are proposing that they have the unilateral right to repeal over a decade

⁹ Re In the Matter of Staff Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 15-130 at Appendix A at 2 (Apr. 16, 2015).

¹⁰ Joint Utilities’ Comments at 6.

¹¹ Id. at 6. (citing Order No. 07-360).

of Commission policies by withholding their consent to continue following Commission orders.

The Joint Utilities point out that these provisions were not discussed until the final meeting, where it was discovered that Staff had incorporated some, but not all, of the Commission's guidelines into its initial draft proposed rules. We agree that the omission of some elements of the guidelines from Order No. 07-360 was not discovered until the second workshop in this docket. Given that the Commission is attempting to update its rules after over a decade of policy changes, it is not unreasonable to expect that the parties would fail to notice all the Commission policies which may or may not have been included in the draft rules. The Commission should not rush this rulemaking to conclusion and omit longstanding, key and fundamental aspects of its PURPA policies because it is seeking an expedited conclusion of this rulemaking.

Absent any compelling reason *not* to adopt any Commission policy, including those related to negotiation of large QF contracts and prices, they should all be adopted. In other words, the Commission should adopt every aspect of these obligations, unless it can be demonstrated that the Commission no longer follows that policy or that an intervening court or agency order has rendered the policy unlawful. The Joint Utilities claim that by allowing the three utilities to use different avoided cost calculation methodologies, the Commission may have somehow implicitly overturned guidelines 7-16. The Joint QF Parties disagree with this notion. Notably, no utility has claimed that its methodology is inconsistent with any specific guideline. Staff expressed uncertainty as to whether PacifiCorp's PDDRR model complies with Guideline 11 (considering fossil fuel price risk), but PacifiCorp maintained in the workshop that it believed it did.

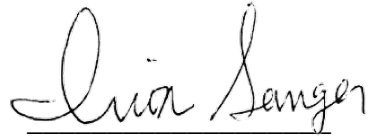
Importantly, all parties acknowledged the reality that these rules very likely are being complied with, and nobody had any specific reason not to include them—other than a generalized worry that they may have been overturned. If they have been overturned, then they should not be incorporated. Absent any proof of that, we see no reason to exclude these provisions.

III. CONCLUSION

The Joint QF Parties respectfully request the Commission decline to adopt the Joint Utilities’ recommendations and move forward with this focused rulemaking expeditiously.

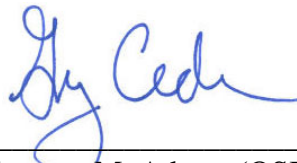
Dated this 5th day of September 2018.

Respectfully submitted,



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