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**VIA ELECTRONIC FILING**

Attention: Filing Center  
Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
P.O. Box 1088  
Salem, Oregon 97308-1088

**Re: Docket AR 593 – Rulemaking Regarding Power Purchases by Public Utilities from Small Qualifying Facilities**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic copy of the Joint Utilities' Initial Comments Regarding Proposed Rules.

Please contact this office with any questions.

Sincerely,

Alisha Till  
Legal Assistant

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**AR 593**

In the Matter of:

Rulemaking Regarding Power Purchases by  
Public Utilities from Small Qualifying  
Facilities.

JOINT UTILITIES' INITIAL COMMENTS

1 Pursuant to the Administrative Law Judge's July 31, 2018 Ruling, Idaho Power Company,  
2 PacifiCorp d/b/a Pacific Power, and Portland General Electric Company (PGE) (collectively, Joint  
3 Utilities) submit these initial comments to the Public Utility Commission of Oregon (Commission)  
4 regarding the proposed revisions to Oregon Administrative Rules (OAR) Division 29, the  
5 Commission's current rules implementing the Public Utility Regulatory Policies Act (PURPA), as  
6 contained in the Notice of Proposed Rulemaking filed with the Secretary of State on July 26, 2018  
7 (Proposed Rules). The Joint Utilities commend Commission Staff's efforts in developing the  
8 Proposed Rules and working with the parties to this docket to achieve consensus regarding many  
9 of the revisions. Generally, the Joint Utilities believe that the Proposed Rules faithfully carry out  
10 the Commission's instructions to propose changes to its existing rules to reflect the policies  
11 established in its orders. These initial comments will address the Joint Utilities' few remaining  
12 issues related to the Proposed Rules and also respond to suggested additions to the Proposed Rules  
13 raised by qualifying facility (QF) representatives at the August 15, 2018 Staff workshop.

14 While the Joint Utilities believe that the Commission should consider significant changes  
15 to its PURPA implementation policies, the Commission has made clear that proposals for  
16 substantive policy changes are reserved for a general investigative docket that will be opened in

1 the late summer or early fall.<sup>1</sup> For that reason, the Joint Utilities defer their major policy proposals  
2 until the upcoming docket. However, nothing in these comments—including the Joint Utilities’  
3 support for various of the Proposed Rules—should be understood to convey support for a specific  
4 Commission policy. Rather, support for a Proposed Rule simply indicates that the Joint Utilities  
5 agree that the provision accurately expresses the Commission’s current policies.

6 **I. Comments Regarding Specific Proposed Rules**

7 **a. OAR 860-029-0010(1): Definition of Avoided Costs**

8 The definition of “avoided costs” in the current rules, reads:  
9 “Avoided costs” means the electric utility’s incremental costs of electric energy or  
10 capacity or both which, but for the purchase from the qualifying facility or  
11 qualifying facilities, the electric utility would generate itself or purchase from  
12 another source and shall include any costs of interconnection of such resource to  
13 the system.

14 The Proposed Rules delete the phrase “and shall include any costs of interconnection of such  
15 resource to the system,” but in its August 21, 2018 comments, Staff recommends adding this  
16 language back in.

17 The Joint Utilities support the definition contained in the Proposed Rules (without the  
18 reference to costs of interconnection) for two reasons. First, the “costs of interconnection”  
19 language is not present in either the Federal Energy Regulatory Commission’s definition of  
20 “avoided costs” or the definition of “avoided costs” in Oregon law, both of which are otherwise  
21 substantively consistent with the definition in the Proposed Rules.<sup>2</sup> Second, numerous factors may  
22 be included in avoided costs, and calling out just one such factor—costs of interconnection—is  
23 likely to create confusion or raise questions as to whether this factor has special significance or

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<sup>1</sup> See, e.g., *In the Matter of PacifiCorp Application to Update Schedule 37 Qualifying Facility Information*, Docket No. UM 1729, Order No. 18-298 at 6 (Aug. 9, 2018).  
<sup>2</sup> 18 CFR 292.101(b)(6); ORS 758.505(1).

1 whether other, non-enumerated factors should not be included. Therefore, the Joint Utilities  
2 oppose Staff’s proposal to insert the “costs of interconnection” language back into the rules.

3 **b. OAR 860-029-0040(6), 0043(2) & 0085(2): Requirement to Offer**  
4 **Renewable Avoided Cost Rates**

5 In Order No. 11-505, the Commission adopted a separate renewable avoided cost stream  
6 for PGE and PacifiCorp because those two utilities were subject to the Oregon Renewable  
7 Portfolio Standard (RPS).<sup>3</sup> It did not adopt the same requirement for Idaho Power, because the  
8 RPS requirements do not apply to Idaho Power until 2025.<sup>4</sup> Idaho Power supports the Proposed  
9 Rules regarding the requirement to offer renewable avoided cost rates, with the understanding that  
10 the Proposed Rules simply codify the intent in Order No. 11-505 that Idaho Power currently is not  
11 required to offer renewable avoided cost rates.

12 In addition, the Joint Utilities note that in Staff’s August 21, 2018 comments, the language  
13 addressing this topic—the description of which utilities must offer renewable avoided cost  
14 prices—differs slightly in different rules. OAR 860-029-0040(6) states that the requirement  
15 applies to utilities “currently complying with Oregon’s renewable portfolio standard,” 860-029-  
16 0043(2) uses the phrase “currently complying with a renewable portfolio standard,” and 860-029-  
17 0085(2) uses “currently subject to Oregon’s RPS.” The Joint Utilities recommend that all three  
18 rules use consistent language, and that 860-029-0043(2) and 860-029-0085(2) be updated to  
19 “currently complying with Oregon’s renewable portfolio standard,” (as used in 860-029-0040(6))  
20 because this is the most specific and accurate articulation of the requirement.

21 **c. OAR 860-029-0080(7)(b): Waiver of an Avoided Cost Update Requirement**  
22 **that Occurs Within 60 Days of an Avoided Cost Update**

23 The Proposed Rules do not address when an avoided cost update may be waived. However,  
24 Staff’s August 21, 2018 comments propose two alternatives for a new subsection (b) relating to

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<sup>3</sup> *In the Matter of Investigation into Determination of Resource Sufficiency*, Docket No. UM 1396, Order No. 11-505 at 4 (Dec. 13, 2011).

<sup>4</sup> Order No. 11-505 at 4.

1 waiver of a requirement to file an avoided cost update in situations where two avoided cost updates  
2 would otherwise be required under the rules within 60 days of each other:

3 Alternative 1: (b) In the event a utility’s integrated resource plan is acknowledged  
4 within 60 days of May 1 in a particular year, the Commission may direct the utility  
5 to waive its 30-day post-IRP update.

6 Alternative 2: (b) In the event a utility’s integrated resource plan is acknowledged  
7 within 60 days of May 1 in a particular year, the Commission may waive the  
8 requirement the utility file an annual update on May 1.<sup>5</sup>

9 Staff correctly recognizes that the waiver language in Order No. 14-058 is limited to waiver  
10 of a post-Integrated Resource Plan (IRP) update that would be required within 60 days of May 1,  
11 and the Joint Utilities agree that Staff’s Alternative 1 subsection (b) accurately reflects the order.  
12 Staff also recognizes, however, that Commission practice has been more flexible and has permitted  
13 a utility not to file a separate May 1 update when May 1 fell within 60 days after a post-IRP  
14 update.<sup>6</sup> Staff incorporates this approach in Alternative 2.

15 The Joint Utilities believe that it makes more sense to waive the May 1 update than to  
16 waive the post-IRP update, as Order No. 14-058 permits, because a May 1 update is limited in  
17 scope, whereas a post-IRP update is more comprehensive. Therefore, the Joint Utilities support  
18 adoption of Staff’s Alternative 2 subsection (b), because it represents a practical implementation  
19 of Commission policy.

20 **d. OAR 860-029-0085(5)(c): Effective Date for Avoided Cost Updates**  
21 **Reflecting a Significant Change**

22 The Proposed Rules provide that an update to avoided cost rates stemming from a  
23 significant change in circumstances “will become effective 90 days after filing.”<sup>7</sup> At the  
24 August 15, 2018 Staff workshop the Joint Utilities noted that neither the existing rules nor Order  
25 No. 14-058 dictate an exact, 90-day timeline for effectiveness of an avoided cost update reflecting

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<sup>5</sup> The Joint Utilities note that this alternative appears to be missing a word between “requirement” and “the utility file.”

<sup>6</sup> See Docket No. UM 1729, PacifiCorp’s Annual Avoided Cost Update Filing (May 1, 2018).

<sup>7</sup> Docket No. AR 593, Staff Report for July 17, 2018 Public Meeting.

1 a significant change.<sup>8</sup> Staff recommends in its August 21, 2018 comments that this provision be  
2 removed in its entirety.

3 The Joint Utilities propose an alternative approach—inserting “within” into the Proposed  
4 Rule so that the subsection would read:

5 Updates to avoided cost rates under this rule are subject to review and approval by  
6 the Commission and will become effective **within** 90 days after filing.

7 This revision would provide certainty as to the outside date by which the Commission would need  
8 to address a filing to change the avoided cost rate, but also would allow the Commission flexibility  
9 to implement revised avoided cost rates on a shorter timeline where the Commission finds it  
10 appropriate to do so. The insertion of “within” also would be consistent with the process provided  
11 for in Proposed Rule 860-029-0085(4)(b), which makes a May 1 update effective “within 60 days.”

12 **e. OAR 860-029-0120(4): Scheduled Commercial Online Date Requirements**  
13 **for Standard Power Purchase Agreements**

14 This Proposed Rule, with the minor edits reflected in Staff’s August 21, 2018 comments,  
15 reads:

16 (4) The power purchase agreement must specify that a qualifying facility may select  
17 a scheduled commercial on-line date consistent with the following:

18 (a) Anytime within three years from the date of agreement execution;

19 (b) Anytime later than three years after the date of agreement execution if the  
20 qualifying facility establishes to the utility that a later scheduled commercial  
21 on-line date is reasonable and necessary and the utility agrees.

22 The Joint Utilities do not object to Staff’s minor edits but are concerned that this Proposed Rule  
23 could be read to require precise language *in the power purchase agreement (PPA) itself* regarding  
24 the QF’s selection of a scheduled commercial online date (COD), rather than simply requiring the  
25 PPA to reflect the COD selected by the QF, consistent with the parameters in the Proposed Rule.  
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<sup>8</sup> The Joint Utilities noted that the existing rule addresses avoided cost data, not rates, OAR 860-029-0080(7), and that Order No. 14-058 did not indicate that the Commission intended to make avoided cost rates resulting from a significant change effective exactly 90 days after filing. *In the Matter of Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 26 (Feb. 24, 2014).

1 To avoid any such interpretation, the Joint Utilities recommend deletion of “The power purchase  
2 agreement must specify,” so that the section begins with “A qualifying facility may select . . .”

3 **f. OAR 860-029-0130(3): Scheduled Commercial Online Date Requirements**  
4 **for Nonstandard Power Purchase Agreements**

5 The Proposed Rules do not address the requirements for scheduled COD for nonstandard  
6 PPAs. However, at the August 15, 2018 Staff workshop, counsel for the Renewable Energy  
7 Coalition (REC) suggested that this rule should contain an analog to proposed OAR 860-029-  
8 0120(4), discussed above, which provides the parameters for a QF’s selection of a scheduled COD  
9 in a standard PPA, and Staff’s August 21, 2018 comments recommend adoption of this suggestion.

10 The Joint Utilities oppose inclusion of such a requirement in OAR 860-0029-0130, because  
11 current Commission policy does not support REC’s request. Order No. 15-130, in which the  
12 Commission set out the parameters for a QF’s selection of its scheduled COD, specifically  
13 addressed *standard* PPAs and did not mention nonstandard PPAs.<sup>9</sup> The Commission has not yet  
14 addressed scheduled COD requirements for nonstandard PPAs, and it would be inappropriate to  
15 include such requirements in the Proposed Rules intended to incorporate existing Commission  
16 policy.

17 If the Commission determines that this new policy should be included in the rules, then the  
18 Joint Utilities request that it be amended consistent with the recommended amendments to 860-  
19 029-0120(4), discussed above.

20 **II. QFs’ Proposal to Incorporate Additional Guidelines from Order No. 07-360**  
21 **Appendix A into Rules**

22 At the conclusion of the August 15, 2018 Staff workshop, following two and a half months  
23 of informal proceedings, QF representatives expressed for the first time their position that most of  
24 the guidelines in Appendix A to Order No. 07-360 (the Appendix A guidelines) should be included  
25 in the Proposed Rules. Appendix A, entitled “Adopted Guidelines for Negotiation of Power

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<sup>9</sup> Docket No. UM 1610, Order No. 15-130 at 2 (Apr. 16, 2015).

1 Purchase Agreements for QFs 10 MW or Larger,” resulted from the generic proceedings in Docket  
2 No. UM 1129 that concluded in 2007.<sup>10</sup> Staff had included some of these guidelines in the  
3 Proposed Rules, and Staff’s August 21, 2018 comments recommend adding one more guideline to  
4 the Proposed Rules but otherwise adhere to Staff’s prior determination regarding which guidelines  
5 should be included. The Joint Utilities support Staff’s position, as reflected in its August 21, 2018  
6 comments.<sup>11</sup>

7 Specifically, turning to the individual guidelines, the Joint Utilities agree with Staff and  
8 the apparent consensus at the workshop that guideline 1 (suggesting that parties start negotiating  
9 using the Edison Electric Institute master agreement) and guideline 2 (dictating the negotiation  
10 procedures to be included in utility tariffs) need not be incorporated into rules, because guideline  
11 1 is outdated and the substance of guideline 2 is already in the utilities’ tariffs. The Joint Utilities  
12 agree with the inclusion of guidelines 3-6 (addressing contract terms), as reflected in the Proposed  
13 Rules. Following the workshop, Staff added guideline 17 (regarding simultaneous purchase and  
14 sale agreements) to the Proposed Rules, and the Joint Utilities do not object to its inclusion.

15 The Joint Utilities concur with Staff that guidelines 7-16 (regarding calculating avoided  
16 cost rates for nonstandard PPAs) are not the type of generally applicable Commission policies that  
17 must be incorporated into rules in this docket. First, these guidelines do not apply to all utilities  
18 and all circumstances. The guidelines themselves recognize that the utilities calculate nonstandard

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<sup>10</sup> *In the Matter of Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 07-360 App’x A (Aug. 20, 2007).

<sup>11</sup> The Joint Utilities note that there is a question as to whether the Commission intended the Appendix A guidelines to be binding. In the order adopting the guidelines, the Commission recognized that the parties have significant latitude in negotiating nonstandard PPAs, stating that “any contract negotiated at arms length will be treated with substantial deference, regardless of how closely it conforms to our guidelines,” and that “every contract must be considered as a whole, with each term interdependent on other terms.” Order No. 07-360 at 5. The Commission noted that guidelines “are likely to be useful to both parties in contract negotiations” and “will increase certainty and may streamline the process, to the ultimate benefit of customers.” Order No. 07-360 at 5. Based on the flexibility that appeared to be contemplated when the Commission adopted these guidelines, the Commission may determine that it is not appropriate to include any of them in the rules. However, the Joint Utilities recognize that a few of the guidelines (guidelines 3-6) are susceptible to translation to rules and do not oppose the inclusion of these guidelines if the Commission finds it appropriate.



1 avoided cost rates in different ways.<sup>12</sup> Moreover, these guidelines have been extensively refined  
2 and, in some cases, appear to have been superseded through subsequent proceedings. In the 11  
3 years since Order No. 07-360 was issued, the Commission has refined its policies regarding  
4 nonstandard avoided cost calculations through additional generic proceedings and approval of the  
5 utilities' compliance filings, QF schedules, and PPAs. For example, in UM 1610, the Commission  
6 revisited nonstandard avoided cost calculation methodologies, approved a new methodology for  
7 PacifiCorp (the PDDRR method), and determined that the three utilities could continue using  
8 different methodologies.<sup>13</sup> In doing so, the Commission implicitly overruled guidelines 7-16, or  
9 at minimum, recognized that these guidelines are not generally applicable, hard-and-fast rules.  
10 Therefore, Staff correctly determined that the guidelines regarding nonstandard avoided cost  
11 calculations should not be included in the Commission's PURPA rules.

### 12 **III. Non-Substantive Edits**

13 Staff's August 21, 2018 comments identified a number of minor, non-substantive revisions  
14 to the Proposed Rules, such as correcting typographical errors or adding missing words, and the  
15 Joint Utilities support these changes.

16 The Joint Utilities suggest the following additional corrections to the Proposed Rules:

- 17 • OAR 860-029-0010(26): "'Rate' means any price, charge, or classification made,  
18 demanded, observed, or received with respect to the sale or purchase of electric  
19 energy or capacity **orf** any rule, regulation, or practice respecting any such price,  
20 charge, or classification." (consistent with current rules)
- 21 • OAR 860-029-0085(3): "The standard avoided cost rates filed by a public utility  
22 under subsections (1) and (2) **of** this rule..." (missing word)
- 23 • OAR 860-029-0120(7)(a): "...subject to an allowance for 200 hoursg of planned

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<sup>12</sup> See Order No. 07-360 App'x A Guideline 2.a.

<sup>13</sup> Docket No. UM 1610, Order No. 16-174 at 22-23 (May 13, 2016).

1 maintenance...” (missing letter)

2 **IV. Conclusion**

3 The Joint Utilities respectfully submit these comments and look forward to the opportunity  
4 to address the Commission and answer any questions regarding their positions at the upcoming  
5 hearing.

Respectfully submitted this 21st day of August, 2018.



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