



ALISHA TILL
Direct (503) 290-3628
alisha@mrg-law.com

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VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

**Re: Docket UM 2000: In the Matter of Public Utility Commission of Oregon,
Investigation into PURPA Implementation.**

Dear Filing Center:

Attached for filing in the above-captioned docket is a copy of the Joint Utilities' Comments on Staff's Draft White Paper.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2000

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation into PURPA Implementation

JOINT UTILITIES'
COMMENTS ON STAFF'S
DRAFT WHITE PAPER

I. INTRODUCTION

In accordance with Staff's May 21, 2019, email, Portland General Electric Company (PGE), PacifiCorp d/b/a Pacific Power (PacifiCorp), and Idaho Power Company (Idaho Power) (together, the Joint Utilities) submit these comments on Staff's Draft White Paper filed in docket UM 2000 on May 28, 2019. The Joint Utilities appreciate the opportunity to file these comments and Staff's work to develop an issues list and scope for the Public Utility Commission of Oregon's (Commission) investigation into its implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Joint Utilities commend Staff for identifying, compiling, and organizing a comprehensive list of issues for Commission investigation in docket UM 2000. The Joint Utilities agree that the issues identified by Staff appropriately capture the matters that should be addressed in this docket and recommend no additional issues for inclusion.

The Joint Utilities further commend Staff for its efforts to identify a subset of issues for fast-track resolution and agree that some issues potentially could be resolved on a more expedited basis. But the Joint Utilities disagree with Staff's proposal to expedite review of certain issues using rulemaking procedures instead of the more robust due process provided by a contested case. The vast majority of the issues that the Commission will address in this case are complex, fact-

intensive, and historically have been highly contentious. Such issues are ill-suited for resolution through rulemaking, which does not allow for the submission of testimony or the cross examination of witnesses. And while certain issues may prove less controversial, the parties will be unable to identify those issues prior to initial discussions. Therefore, the Joint Utilities recommend that all issues be assigned to a single contested case proceeding at the outset. To allow for expedited resolution of less contentious issues, the Joint Utilities recommend that the procedural schedule include an early opportunity for stakeholders to identify and resolve less controversial issues via consensus and settlement.

In addition to ensuring adequate due process, a single contested case docket will also prove most efficient. Many of the issues raised in Staff's Draft White Paper are interdependent, and as such, bifurcating matters into rulemaking and contested case processes risks having the parties and the Commission spend a great deal of time and energy developing new rules only to have those rules become obsolete once the contested case process concludes. Maintaining a single process, instead of multiple parallel dockets, would best ensure consistent results based on a holistic investigation. Once the Commission makes key decisions in a contested case based on a comprehensive evidentiary record, it can then adopt rules codifying its decisions.

Finally, although the Joint Utilities disagree with certain factual representations and characterization of Commission precedent included in the Draft White Paper, the Joint Utilities' comments here focus on Staff's procedural recommendations and reserve substantive comments for a later date.

II. DISCUSSION

A. The Joint Utilities agree with Staff's proposed issues list.

Staff provides a thorough overview of the issues raised by stakeholders during the scoping process and reasonably reflects the issues that the Joint Utilities recommend for inclusion in this case. The Joint Utilities appreciate Staff's diligent efforts to identify and organize a proposed issues list and believe Staff identifies a reasonable scope for the Commission's investigation. The Joint Utilities therefore recommend no additional issues for inclusion in the issues list.

B. The Joint Utilities agree that some issues may be resolved on an expedited basis but recommend maintaining a single contested case process.

The Joint Utilities agree with Staff that some of the issues, particularly process-based issues, could potentially be resolved on a faster track if they prove relatively non-controversial and do not involve disputed issues of fact. Early resolution through stakeholder consensus has occurred in other generic PURPA investigations, and the Joint Utilities agree that consensus could be achieved on some issues here, as described in more detail below in Section II.C. However, the Joint Utilities disagree with Staff's proposal to remove some issues from the contested case process at the outset and fast-track resolution of those issues through the less procedurally robust rulemaking process.

1. Using a contested case process ensures sufficient due process.

Contested cases allow for the submission of pre-filed testimony and exhibits and require the Commission to base its decision exclusively on an evidentiary record developed in a trial-like proceeding.¹ As the Commission explains in its Internal Operating Guidelines, its contested case rules are "generally designed to ensure that persons affected by agency action (1) are given prior

¹ *In the Matter of Public Utility Commission of Oregon Internal Operating Guidelines*, Docket No. UM 1709, Order No. 14-358, App. A at 7 (Oct. 17, 2014) (hereinafter "Internal Operating Guidelines").

notice of the case; (2) have a fair opportunity to present evidence and argument on the issues raised; and (3) are able to respond to all evidence and argument offered by other parties.”² According to the Commission, “[c]ontested case proceedings are subject to the most procedural requirements of any decision-making process used by the Commission.”³

The Commission’s rulemaking process, on the other hand, is procedurally limited and requires the Commission to “(1) give proper notice of the proposed rulemaking; and (2) allow interested persons an opportunity to comment or request a hearing on the rulemaking.”⁴ The Commission must consider the comments that it receives, but the Commission’s “adoption, amendment, or repeal of a rule does not need to be based on an evidentiary record.”⁵ Rulemaking does not involve the submission of pre-filed testimony and does not include discovery. Moreover, although the Commission is required to hold a hearing if requested, the hearing does not allow for cross-examination to test the veracity of disputed factual representations included in the record.

Here, where many of the Commission’s policy decisions will necessarily be informed by facts—many of which will be disputed—the contested case process is better suited to create the evidentiary record necessary to inform the Commission’s decision-making. The Joint Utilities recommend against using rulemaking to develop PURPA policies.

2. Evaluating all of the issues in a single contested case is straightforward, administratively efficient, and will ensure consistency.

Keeping all the issues under consideration in a single contested case process not only ensures sufficient due process, it is also the most efficient and consistent approach. The Draft White Paper appears to envision that issues in this case will be addressed in at least three separate

² *Id.* at 8.

³ *Id.* at 7.

⁴ *Id.* at 5.

⁵ *Id.*

processes—(1) one or more rulemakings to address issues Staff believes are less complex and presumably less controversial; (2) a separate investigation into utility resource planning; and (3) the general contested case process envisioned for docket UM 2000.⁶ However, bifurcating the issues identified in the Draft White Paper into multiple parallel processes ignores the fact that many, if not all, of the issues overlap and are highly interdependent.

As Staff correctly notes, some of the issues marked for potential fast-tracking through rulemaking will potentially be impacted by resolution of related issues in the contested case process, which could lead to inconsistent results or require the Commission and parties to expend resources revisiting issues that were already decided. For example, Staff appears to recommend that the Commission undertake a fast-track review of standard contracts and potentially adopt significant changes to the terms and conditions in the near-term, while subsequently considering issues in the longer-term contested case process that would implicate the same types of contracting issues.⁷ It makes little sense to devote limited resources to an expedited process now only to have those efforts rendered moot in the contested case. And if the fast-tracked issues are given limited due process as Staff proposes, the risk of inconsistent results between the near- and long-term processes is magnified.

Therefore, the most efficient way to evaluate and resolve the issues in this case is through a single contested case proceeding where every issue is afforded due process and where the Commission can holistically examine all the inherently interdependent and overlapping issues at the same time and ensure consistent results.

⁶ Draft White Paper at 21-23.

⁷ Draft White Paper at 20.

3. The procedural schedule can include sufficient settlement process early on to allow for fast-tracked resolution of non-controversial issues.

The Joint Utilities agree with Staff that there are some potentially non-controversial issues identified by stakeholders that likely do not require resolution of factual disputes and that can be addressed by consensus and settlement. To that end, the Joint Utilities recommend that the procedural schedule for docket UM 2000 include early stakeholder workshops and settlement conferences designed to identify issues that can be resolved on an expedited basis. The Joint Utilities' proposed approach provides an opportunity to produce near-term results without unreasonably compromising parties' due process rights and creating the administrative complexity that would result with multiple concurrent proceedings.

4. The Commission can use rulemaking to codify the policy determinations it made based on the contested case evidentiary record.

The Joint Utilities recommend that, if appropriate, the Commission's policy guidance developed through the contested case process in docket UM 2000 subsequently be incorporated into rules, much in the way the Commission memorialized its earlier policies in docket AR 593. In this way, the rulemaking process follows the contested case thereby ensuring that those policy determinations codified in rule are first made with the benefits of a full evidentiary record and a public contested case hearing.

C. Identification of issues that can potentially be resolved on an expedited basis.

Staff identifies potential issues in four different categories that could be resolved using a limited fast-track process: (1) avoided costs; (2) contracts; (3) interconnection; and (4) planning.⁸ The Joint Utilities address each of the issues below. Consistent with the discussion above, the Joint Utilities recommend that any expedited review occur in the context of a contested case so

⁸ Draft White Paper at 17-19.

that, if issues are not resolved by consensus, they will be resolved by the Commission based on a full evidentiary record and contested case process.

1. Avoided Costs

Staff recommends working with stakeholders to “develop a standardized template for avoided cost modeling inputs and outputs,” based on the “current modeling methodology.”⁹ The Joint Utilities agree with Staff that developing a template for displaying inputs and outputs is likely to be non-controversial and could occur through settlement on an expedited basis. However, the Joint Utilities note that potential modifications to the underlying avoided cost methodology that could occur later may render the template moot, or require substantial revisions. The Joint Utilities are nonetheless committed to working with Staff and stakeholders on this issue.

2. Contracting

Staff “proposes to draft a straw proposal of standard contracting procedures and terms to initiate a holistic review of contract terms” and recommends taking up this issue on an expedited basis through rulemaking.¹⁰ The Draft White Paper also identifies specific issues that “Staff would want to attempt to address in the near term.”¹¹

Before addressing the specifics of Staff’s proposal, the Joint Utilities note that it encompasses two distinct areas: (1) the processes required for utilities and qualifying facilities (QFs) to enter a standard contract and (2) the terms and conditions that should be included in the standard contract. Generally, the Joint Utilities agree that the *process* for obtaining a standard contract, including the exchange of required information, timing, and procedures, could potentially be addressed through settlement on a near-term basis. The Joint Utilities disagree, however, that

⁹ Draft White Paper at 17.

¹⁰ Draft White Paper at 17-18.

¹¹ Draft White Paper at 18.

changes to the *terms* of the standard contract are appropriate for a fast-track process. Experience has shown that revising contract terms is time-intensive and that reaching consensus, even on non-substantive changes, can be extremely difficult. Notably, most terms flow from substantive Commission policies, some of which may be revisited in this case. It makes little sense to devote stakeholders' limited resources to developing contract terms on a fast-track, when those terms will likely change again at the conclusion of the longer-term investigation. Moreover, modifications to contract terms and conditions may also require an evidentiary record, which cannot be developed on an expedited basis. For these reasons, the Joint Utilities generally disagree that contract terms should be addressed on a fast-track.

Turning to the specific questions Staff believes could be resolved on a fast-track, the Joint Utilities offer the following responses:

a. What would contract timing, term, project size, compensation, security, and renewal encompass?

To the extent this question addresses contract terms, the Joint Utilities generally disagree that the issues should be addressed on an expedited basis, for the reasons set forth above. This question also illustrates the problems inherent in bifurcating issues. For example, Staff recommends addressing contract compensation on a fast-track, which would appear to undermine the intent to address avoided cost methodologies in the longer-term investigation. Staff correctly notes that addressing contract terms in piecemeal fashion can create unintended results, which is precisely why revisions to the standard contract should not occur before the longer-term investigation concludes.

Further, several contract terms listed in the question will likely require a factual record if proposed revisions are contested. For example, to the extent a stakeholder recommends any changes to contract term (*i.e.*, the length of the contract), the Joint Utilities do not agree that the

issue could be resolved on an expedited basis, and it certainly cannot be resolved without a full evidentiary record.¹²

Staff also suggests that project size should be resolved on a fast-track. But a project's size determines whether it is eligible for a standard contract and thus has potentially far-reaching implications. Without knowing what stakeholders may recommend, it is premature to decide that this issue should be resolved quickly and without an evidentiary record.

Next Staff identifies "security." The Joint Utilities agree that changes to contract security provisions could potentially be resolved through consensus, but caution that changes to these contract provisions could have a ripple effect on other provisions that have not been identified for near-term resolution. And, to the extent a proposed change to contract security terms presents factual issues that require resolution, the Joint Utilities disagree that such an issue should be decided without a contested case.

Finally, Staff raises "renewal." Standard contract renewal issues potentially implicate other issues, including, for example, how existing QFs are treated for resource planning purposes and how avoided cost prices for renewals are calculated (*e.g.*, how far in advance of original contract termination a QF can "lock-in" a renewal price). However, Staff proposes to resolve planning and avoided-cost issues in different processes and on different timelines, and therefore resolution of renewal issues in isolation and on an expedited basis is unreasonable unless there is consensus and broad stakeholder support.

¹² *See, e.g.*, Docket Nos. UM 1725 and UM 1734 (full contested cases addressing proposed changes to contract term).

b. What is the minimum level of information to be provided?

The Joint Utilities agree that this issue can be explored in the near term and has potential to be resolved on a fast-track through settlement without an evidentiary record. However, the Joint Utilities caution that if factual issues arise, a longer-term contested case may become necessary.

c. Will there be any contractual flexibility due to technology improvements (pre- and post-construction)?

This issue presents potentially complex and overlapping issues that, depending on the specific proposals made, could require a factual record to resolve. The Joint Utilities therefore support exploring this issue for near-term resolution, but caution that if factual disputes arise as concrete proposals are made, this issue may need to be resolved in the longer-term contested case.

d. How should damage provisions be incorporated?

The Joint Utilities agree that this issue could possibly be resolved through consensus in the near-term, subject to the same caveats set forth above that the specific proposals made by stakeholders may require an evidentiary record and prevent expedited consideration.

e. What is the appropriate treatment of storage?

The treatment of storage resources implicates many different aspects of the Commission's PURPA implementation policies, including how the storage component of the resource is considered when determining a project's size, how avoided cost prices account for the storage component's operating characteristics, and how contract terms and conditions should address a project that includes storage components. These issues are complex, likely controversial, and will likely involve factual disputes that will require a full contested case process. Therefore, the Joint Utilities do not agree that the treatment of storage resources is appropriate for a fast-track resolution.

3. Interconnection

Staff identified several interconnection-related issues that it believes could be addressed on a fast-track, including “more transparent process, access to studies, dispute resolution, and treatment of costs associated with network upgrades, among others.”¹³ The Joint Utilities believe that some of the issues Staff identified could be resolved in the near-term. But the Joint Utilities believe that many interconnection issues are unsuited for expedited resolution because they are technically complex, require an evidentiary record, and have potentially far-reaching implications.

Most notably, Staff recommends that the “treatment of costs associated with network upgrades” be addressed on a fast-track.¹⁴ The Joint Utilities disagree with this recommendation, particularly in light of the expectation that some stakeholders will recommend a reversal of the Commission’s long-standing policy. The Commission’s current policy for allocation of network upgrade costs arose from heavily litigated, multi-year investigations¹⁵ in which the Commission adopted a policy to “ensure that QF interconnection comports with the Commission’s customer indifference standard.”¹⁶ Modifying or reversing long-standing Commission policy should not occur through a fast-track process and without an evidentiary record. Moreover, the Commission has recognized that avoided cost pricing and allocation of network upgrade costs are mutually dependent, and therefore it is unreasonable to examine one in isolation from the other.

Turning to the specific questions Staff believes could be resolved on a fast-track, the Joint Utilities offer the following responses:

¹³ Draft White Paper at 18.

¹⁴ Draft White Paper at 18.

¹⁵ See, e.g., Docket Nos. AR 521 and UM 1401.

¹⁶ *In the Matter of Public Utility Commission of Oregon Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 18-181 at n. 11 (May 23, 2018).

a. What is the appropriate level of detail to provide in interconnection studies?

The Joint Utilities believe that continuing dialog could allow stakeholders to reach consensus on this issue. That said, if specific proposals or recommendations are disputed, the Joint Utilities believe it is unreasonable to resolve such disputes on an expedited basis and without an evidentiary record.

b. What options does a QF have to perform its own studies or upgrades?

The Commission's current interconnection policies have detailed provisions that allow QFs to perform their own studies in certain circumstances.¹⁷ The Joint Utilities agree that stakeholders may be able to reach consensus on potential modifications to existing policies to address third-party studies or upgrades. Therefore, the Joint Utilities recommend inclusion of this issue in settlement discussions. But, to the extent disputes arise, resolution will likely require a fully developed factual record, making fast-track resolution infeasible.

c. Should there be modifications to the current process, including more enforceable timelines?

Generally, the Joint Utilities agree that process-based changes are appropriate for potential resolutions on an expedited basis, subject to the same caveats set forth above.

d. Should independent third parties be retained to review studies?

It is unclear what Staff intends with this issue, but the Joint Utilities are open to exploring potential consensus on allowing third-party review of interconnection studies.

e. Are there further data access issues not captured in Docket UM 2001?

The Joint Utilities agree that data access issues are potentially appropriate for expedited resolution, subject to the same caveats set forth above.

¹⁷ See, e.g., *In the Matter of Public Utility Commission of Oregon Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger Than 20 Megawatts to a Public Utility's Transmission or Distribution System*, Docket No. UM 1401, Order No. 10-132, App. A at 40 (Apr. 7, 2010).

f. In designing the interconnection, are there lower-cost alternatives that are being overlooked?

The Joint Utilities disagree that this issue can be addressed on an expedited basis and without a full evidentiary record. Although it is unclear what exactly Staff intends with this issue, it appears that the focus of this issue is whether there are lower-cost alternatives to the interconnection costs, including network upgrade costs, identified in utility interconnection studies. Resolution of such technically complex and factually intensive issues should not occur on an expedited basis.

g. What is the level of SCADA data needed—and for what size QF?

The Joint Utilities agree that this issue is potentially appropriate for expedited resolution if parties can achieve consensus. However, the Joint Utilities anticipate that parties' proposals regarding this issue will likely be disputed and will raise factual questions that require a full contested case process.

h. What rules/guidelines apply to 10-20 megawatt projects?

The Joint Utilities agree that this issue is potentially appropriate for expedited resolution to the extent that resolution involves applying existing rules or guidelines to projects between 10 and 20 megawatts (MW). However, if this issue involves developing a new framework for interconnection projects between 10 and 20 MW, then the Joint Utilities recommend that this issue be addressed in the longer-term contested case process.

4. Planning

Staff recommends “issues related to planning and contract renewals could be addressed on a fast track” but in a separate, stand-alone proceeding.¹⁸ The Joint Utilities disagree with Staff’s recommendation. As Staff notes, the planning issues that would be addressed in isolation have a

¹⁸ Draft White Paper at 18-19, 21.

direct bearing on several important issues that will be addressed in docket UM 2000, including how capacity payments are made to QFs renewing their contracts and how utility resource sufficiency/deficiency is determined. A holistic review of avoided cost methodologies should occur in docket UM 2000, and the Joint Utilities disagree that it is appropriate to extract certain issues for piecemeal expedited review outside of a full contested case process.

III. CONCLUSION

The Joint Utilities appreciate the opportunity to file these comments and applaud Staff's hard work, including its commendable efforts to identify, compile, and organize the issues for resolution in docket UM 2000. The Joint Utilities also agree that several issues can potentially be resolved in the near-term through continued stakeholder dialogue. But the Joint Utilities disagree that it is reasonable at this time to identify certain issues that should be removed from this docket and resolved on an expedited basis and without a contested case. Such an approach undermines stakeholders' due process rights and is administratively inefficient. Given the interdependent nature of nearly all of the Commission's PURPA implementation policies, and the technically complex and highly controversial nature of many of the issues, the Joint Utilities recommend that all of the issues identified by Staff be resolved in a single contested case process where the Commission can undertake a comprehensive and truly holistic review of its policies.

Respectfully submitted this 7th day of June 2019, on behalf of Joint Utilities.



Lisa F. Rackner
Adam Lowney
Jordan R. Schoonover
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
Telephone: (503) 595-3922
dockets@mrg-law.com

Donovan Walker
Idaho Power Company

Jessica B. Ralston
PacifiCorp d/b/a Pacific Power

Don Light
Portland General Electric Company

Attorneys for Idaho Power Company, PacifiCorp, and
Portland General Electric Company