

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2000**

**Phase 1**

In the Matter of  
  
Public Utility Commission of Oregon,  
  
Investigation into PURPA Implementation

COMMUNITY RENEWABLE  
ENERGY ASSOCIATION,  
NORTHWEST & INTERMOUNTAIN  
POWER PRODUCERS COALITION,  
AND THE RENEWABLE ENERGY  
COALITION’S COMMENTS ON  
STAFF’S STRAW PROPOSAL AND  
PHASE 1 ISSUES

**I. INTRODUCTION AND SUMMARY**

The Community Renewable Energy Association, the Northwest & Intermountain Power Producers Coalition, and the Renewable Energy Coalition (collectively the “QF Trade Associations”) hereby respectfully submit these comments on the Oregon Public Utility Commission (“OPUC” or the “Commission”) Staff’s Straw Proposal filed March 7, 2024 (“Staff’s Straw Proposal”) and the issues list for the contested case phase of this proceeding.

The QF Trade Associations understand Phase 1 and Phase 2 of this docket to be intended to reexamine the Commission’s implementation of policies governing avoided cost rates offered to qualifying facilities (“QFs”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”), particularly in light of Oregon’s recent greenhouse gas emissions law, known as House Bill 2021 (“HB 2021”). In addition to the policy directives of HB 2021, the Commission and Staff should not overlook that fact that federal and state law specifically command that the

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ISSUES

Commission’s avoided cost rate policies be designed to “encourage”<sup>1</sup> QFs; “[p]romote the development” of these resources “to the highest degree possible;”<sup>2</sup> and to “[i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon’s citizens.”<sup>3</sup> Too often in Commission proceedings, the focus shifts away from the overarching policy to promote development of small-scale renewable energy facilities under PURPA, and the Commission instead errs on the side of underestimating the reasonably forecasted avoided costs in response to utility arguments. That approach results in substantially less renewable energy development than would otherwise occur. The last several years in particular have been years with very little QF development largely due to the unreasonably low avoided cost rates, unreasonably short fixed-price terms, interconnection obstacles, and, in the case of solar QFs, an unreasonably low eligibility cap for access to standard rates. The QF “pipeline” is nearly empty, and it is time for the Commission to adjust policies in a way that encourages development.

The QF Trade Associations appreciate the efforts of Staff in developing the initial Straw Proposal. Certain elements of Staff’s Straw Proposal would implement rate adjustments that the QF Trade Associations have long recommended are necessary to fully compensate QFs for all costs they allow their purchasing utility to avoid, such as a small-scale renewable adder for ORS 469A.210-compliant QFs and an avoided deliverability cost adder. The QF Trade Associations support development of such rate adjustments as soon as possible, but stress that the rate

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<sup>1</sup> 16 USC § 824a-3(a).

<sup>2</sup> ORS 758.515(2)(a).

<sup>3</sup> ORS 758.515(3)(a).

calculation methods should be designed to *fully* compensate QFs for these values and should not err on the side of underestimating the avoided costs. However, other elements of Staff’s Straw Proposal are concerning to the QF Trade Associations, such as the proposal to eliminate the option to sell bundled renewable energy credits (“RECs”) for additional compensation through the use of two avoided cost rate options. Other proposals are more difficult to evaluate in the abstract, such as how to select and properly implement a greenhouse-gas-free capacity resource. The QF Trade Associations do not therefore have a final position on certain elements of Staff’s Straw Proposal.

Another important consideration for the Commission and setting avoided costs is the value provided by the currently existing and operating renewable resources, including QFs. Oregon will not be able to meet its renewable and climate goals with new Renewable Portfolio Standard (“RPS”)-compliant resources alone, but also must maintain and value its currently operating resources. The Commission has articulated a policy that renewing QFs should be compensated for the value they provide to the utilities,<sup>4</sup> but this policy has never been implemented. Specifically, the Commission stated: “We agree with Staff and the Joint QFs that a certain amount of capacity may not be valued if utilities assume in their IRPs that existing QFs nearing contract expiration will automatically renew. We direct each utility to work with parties to address this issue in its next IRP.”<sup>5</sup> However, after nearly a decade, this policy has never been properly implemented. As discussed further below, the QF Trade Associations have three

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<sup>4</sup> *In re Commission Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 19 (May 13, 2016).

<sup>5</sup> Docket No. UM 1610, Order No. 16-174 at 19.

primary recommendations to more accurately value the benefits provided by existing QFs: 1) elimination of the resource sufficiency period for existing QFs (consistent with Staff’s recommendation of no sufficiency period “ramp-in” for existing QFs), 2) use of a first-in effective load carrying capability (“ELCC”), especially for existing QFs (contrary to Staff’s recommendation), and 3) using reasonable forecasts for QF contract renewals (generally consistent with Staff’s recommendation). The QF Trade Associations may propose a different or additional methodology to compensate existing QFs for the value they provide to a utility and reserve the right to propose other methodologies.<sup>6</sup>

In the remainder of these comments, QF Trade Associations provide their preliminary position on the issues identified within Staff’s Straw Proposal. The comments are organized in the same sequence as the issues in Staff’s Straw Proposal. After addressing Staff’s specific proposals, these comments will also address two additional issues: 1) the need to adopt policies promoting use of QFs for local resiliency; and 2) the need to offer fixed-price power-sale terms of at least 20 years.

## II. COMMENTS

### A. Standard Price Streams

**Staff’s Straw Proposal:** *Staff proposes to eliminate the distinction between renewable and non-renewable rates in recognition that purchases from QFs are avoiding non-emitting resource procurement moving forward. Staff also proposes to introduce a hybrid resource class based on the characteristics of a solar + storage resource. To maintain flexibility, Staff proposes that utilities develop additional resource classes upon request if*

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<sup>6</sup> For example, the QF Trade Associations may recommend that, for determining QF pricing, the Commission require the utility to identify an alternative planning scenario with no QF renewals to determine pricing. *See generally*, Docket No. UM 1610, Joint QF Parties/100, Higgins (May 22, 2015).

*there is a 5% or greater difference in capacity contribution due to features such as configuration or geography.*

*i. Due to the scale of ongoing non-emitting resource procurement and Staff's proposed modifications to the capacity valuation methods, Staff believes that the risks of stale pricing through the use of standard avoided cost rates are less relevant. Staff proposes that all resource classes be eligible for standard pricing up to 10 MW.*

*ii. Staff believes that HB 2021 utilities should be working to better capture small-scale resources in their IRPs. If there is a realistic QF proxy modeled in the IRP for a given QF resource class, that can be used for the assumptions about the purchasing QF's characteristics (QF Proxy). Further, the utility should use independent and open-source data to develop the QF proxy characteristic assumptions. Staff proposes the NREL Annual Technology Baseline (ATB) for use in initial implementation.*

#### **QF Trade Associations Comments:**

At the outset, the QF Trade Associations cannot support the proposal to “eliminate the distinction between renewable and non-renewable rates” because this proposal could undermine QF development and even be unlawful, depending on how the HB 2021-compliant avoided cost rates are implemented. For the reasons explained below, the QF Trade Associations recommend that, at least for the time being until experience is gained with the new HB 2021-compliant rates, the Commission should maintain its policy under which QFs may elect to sell their bundled RECs to the utility for additional compensation.

Although HB 2021 now requires greenhouse-gas-free energy more broadly than the RPS, the utilities are still subject to the RPS, and not all utility resources that will be HB 2021-compliant will necessarily also comply with the RPS. For example, PacifiCorp has plans to acquire nuclear energy facilities and carbon capture technology on coal facilities that may supply

HB 2021-compliant energy but would not qualify under Oregon’s RPS.<sup>7</sup> Similarly, a four-hour battery energy storage system does not necessarily rely solely on greenhouse-gas-free or renewable energy in the same manner that a hybrid solar-plus-storage QF must. Depending on location and use of the battery, a grid-connected battery can potentially even result in additional greenhouse gas emissions if it charges predominantly from greenhouse gas emitting resources.<sup>8</sup> And recent proposals have been made to calculate avoided costs of such batteries by reducing the battery’s capital costs by certain other value streams that likely would include arbitraging energy that is not greenhouse-gas-free to arrive at a so-called “net capacity cost.” The QF Trade Associations do not agree that a rate calculated in that manner would comply with the legislative directive to calculate avoided cost rates that “accurately reflect the characteristics of generators that contribute to compliance with” HB 2021’s greenhouse-gas-free requirements once the utilities are no longer planning to acquire resources for the RPS compliance.<sup>9</sup>

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<sup>7</sup> *PacifiCorp 2023 Integrated Resource Plan*, Docket No. LC 82, PacifiCorp’s Oregon Clean Energy Planning Supplement at 4 (Apr. 1, 2024) (listing a 500 MW Sodium nuclear reactor online in 2030 and carbon capture equipment at Bridger Coal Plant as forecasted resources in 2023 IRP Update).

<sup>8</sup> *See* Brad Plumer and Nadja Popovich, *Giant Batteries Are Transforming the Way the U.S. Uses Electricity*, New York Times (May 7, 2024), <https://www.nytimes.com/interactive/2024/05/07/climate/battery-electricity-solar-california-texas.html> (citing analysis concluding “many batteries today are actually increasing carbon-dioxide emissions . . . because operators focus on maximizing revenue and sometimes charge with coal or gas power”).

<sup>9</sup> Section 8 of HB 2021 provides:

- (4)(a) For an electric company subject to ORS 469A.052, the commission shall initiate a process to update the avoided costs calculated pursuant to ORS 758.525 for a qualifying facility under ORS 758.505 to ensure avoided costs accurately reflect the characteristics of generators that contribute to compliance with sections 1 to 15 of this 2021 Act.

Further, given recent forecasts for expected load growth, it is not unreasonable to expect that the utilities will need to continue acquiring substantial RPS-compliant resources into the future. Thus, an RPS-compliant QF is still likely to deliver added value over and above the lowest incremental costs for HB 2021-compliant energy and capacity in the market.

As a legal matter, if the utility is using the QF's RECs for RPS compliance, PURPA requires that the rates paid reflect an avoided cost of that bundled REC value. The Ninth Circuit has held, "where a state has an RPS and the utility is using a QF's energy to meet the RPS, the utility cannot calculate avoided costs based on energy sources that would not also meet the RPS."<sup>10</sup> It is not clear how the renewable rate could lawfully be eliminated at this time in light of that precedent and current circumstances.

The QF Trade Associations are also concerned that eliminating the renewable rate option could end up being a significant adverse policy change for QF development. The added rate option for renewable QFs has provided an important second rate option that has supported development at times where it was not possible to develop facilities under the utility's calculated

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- (b) The process initiated by the commission under paragraph (a) of this subsection may commence no sooner than two calendar years before the calendar year identified in the electric company's acknowledged integrated resource plan that shows the electric company will meet or exceed the requirements described in ORS 469A.052 (1)(h) and must conclude no later than the calendar year identified in the acknowledged integrated resource plan that shows the electric company will meet or exceed the requirements described in ORS 469A.052 (1)(h).

<sup>10</sup> *Californians for Renewable Energy v. Cal. PUC* ("CARE v. CPUC"), 922 F3d 929, 937 (9th Cir 2019). Notably, in Order No. 872-A, The Federal Energy Regulatory Commission ("FERC") denied the California Utilities' attempt to reverse *CARE v. CPUC*. See Order No. 872-A, 173 FERC ¶ 61,158, PP 72-73 (Nov. 19, 2020) (agreeing with the reasoning of the *CARE v. CPUC* decision and further explaining: "We cannot overrule a Court of Appeals decision, as California Utilities suggest.").

avoided costs from non-renewable resources. There is no reason at this time to expect that benefits of the renewable rates will no longer exist. Particularly at a time when the final impact of the HB 2021-compliant avoided cost rates is unknown, it would be unreasonable to abandon the renewable rate option for QFs willing and able to sell bundled RECs and RPS-qualified energy and capacity to a utility.

The QF Trade Associations acknowledge that there may eventually be circumstances where the RPS-compliant rate could be duplicative and thus reasonably collapsed into the HB 2021-compliant rate. Specifically, the RPS-compliant and HB-2021-compliant rates could be the same if the utility is planning on using the same non-emitting resource for compliance with both the RPS and HB 2021. In that case, the Commission could potentially approve a single set of rates that complies with both objectives for that utility. However, it is not clear that Staff and the utilities will propose an RPS-compliant resource to develop the HB 2021-compliant rates, or that the utilities no longer must acquire resources to comply with the RPS.

In sum, the QF Trade Associations submit that until the specifics of the HB 2021-compliant rate mechanism are better understood, it is premature to eliminate the renewable rate option.

*i. Eligibility Cap*

The QF Trade Associations agree with Staff that the eligibility cap should be raised for solar QFs. The Commission's decision to lower the eligibility cap to 3 MW for solar QFs has been one of the most harmful policies for solar QF development in the state, and it is well past time to revisit that decision. The QF Trade Associations would also support increasing the eligibility cap further for all resource types, and particularly for resources meeting ORS



469A.210's requirements, because a 20-MW cap would further encourage such resources and align with 469A.210's 20-MW cutoff for small-scale renewable energy projects.

ii. *Small-Scale Proxy*

The QF Trade Associations agree with some of Staff's points regarding development of a small-scale renewable proxy within HB 2021 utilities' integrated resource plans ("IRPs"), but Staff's recommendation is not entirely clear. In the QF Trade Associations' view, the HB 2021 utilities should be *required* to offer ORS 469A.210-compliant QFs avoided cost pricing that fully incorporates all costs the utility would otherwise incur to develop and operate such a facility, and the Commission should develop such a rate through a small-scale renewable proxy rate. As noted above, the Ninth Circuit has held that "where a state has an RPS and the utility is using a QF's energy to meet the RPS, the utility cannot calculate avoided costs based on energy sources that would not also meet the RPS."<sup>11</sup> HB 2021 made the small-scale renewable capacity requirement in ORS 469A.210 a mandatory requirement for PacifiCorp and PGE, and those utilities will use ORS 469A.210 QFs to meet that capacity requirement.<sup>12</sup> Thus, the Commission

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<sup>11</sup> *CARE v. CPUC*, 922 F3d at 937.

<sup>12</sup> The QF Trade Associations note that this Commission's administrative rules even allow the utility to claim the compliance value of ORS 469A.210-compliant QF's without purchasing the facilities' RECs. See OAR 860-091-0030 (allowing utilities to rely on small-scale renewable facilities that are RPS compliant but not requiring the utility to purchase the RECs); *In the Matter of Small-Scale Renewable Energy Projects Rulemaking*, Docket No. AR 622, Order No. 21-464, at 10-13 (Dec. 15, 2021) (rejecting renewable advocates' arguments that utilities must own a facility's RECs to claim facility's capacity for compliance with ORS 469A.210 and reasoning "the Legislature very clearly chose to make a capacity-based standard" and "RECs signify the attributes of renewable energy delivery"). To also deny payment through avoided cost rates for the actual costs of ORS 469A.210-compliant capacity supplied by such QFs would be plainly illegal under *CARE v. CPUC*.

cannot calculate avoided costs paid to those QFs based on sources that would not also meet the requirements of ORS 469A.210.<sup>13</sup>

Additionally, based on past experience, the QF Trade Associations are reluctant to agree that the utilities should continue to be permitted to individually calculate and revise their avoided cost rates in each IRP. In past IRPs, certain utilities have found creative ways to suppress the avoided cost rates through use of unrealistic price and gas forecasts, capacity costs, resource acquisition deferrals, transmission availability, and other significant elements to the rate calculations. It has not been possible for stakeholders to adequately police every IRP, rate filing, and the associated work papers under the current policy. Another alternative would be use of a Staff-controlled proxy resource or, as Staff appears to suggest, mandated use of transparent and independently verifiable rate inputs from a reputable third party like the NREL Annual Technology Baseline. The QF Trade Associations support increased transparency and less discretion in rate calculation to the individual utility through its IRP and avoided cost compliance filings.

## **B. Capacity Valuation**

**Staff's Straw Proposal:** *Staff proposes the following provisions to reflect the capacity contribution of a QF in a changing system:*

*i. Capturing the capacity contribution over the life of the resource by moving away from a snapshot ELCC.*

*ii. Replacing the sufficiency/deficiency demarcation with a fixed ramp-in to reflect the expected ongoing procurement of non-emitting resources, while acknowledging that the driver of the procurement is not an energy or capacity shortage.*

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<sup>13</sup> *CARE v. CPUC*, 922 F3d at 937.

*iii. Moving toward a more realistic capacity resource, that is non-emitting and deliverable to Oregon customers.*

*iv. Aligning compensation with the role the resource is expected to play in the utility's reliable, decarbonized resource portfolio by using a last-in ELCC tuned to a realistic and reliable system.*

*v. Sending signals to incent hybrid resource dispatch when it's most useful through a pay as you go premium peak approach.*

**QF Trade Associations Comments:**

*i. Snapshot ELCC:*

The QF Trade Associations need further explanation of Staff's proposal on this point and therefore do not have a position at this time.

*ii. Fixed Ramp-In Sufficiency Period:*

In general, the QF Trade Associations support Staff's proposal to replace the existing sufficiency period policy's reliance on an individual utility's IRP with a fixed ramp-in for the sufficiency period. Staff's proposal appropriately reflects the expected ongoing procurement of non-emitting resources, and that the driver of the procurement is not necessarily limited to an energy or capacity shortage as the current policy assumes. Further, as noted above, the QF Trade Associations are highly skeptical of the utilities' use of their individual IRPs to demark the end of the sufficiency period. Under that policy, the Oregon utilities have managed to maintain excessively long sufficiency periods lasting a decade or more during times when the sufficiency period market pricing was historically low, while simultaneously acquiring major generation resources before the next avoided cost rate cycle. Utilities have also more recently shortened their sufficiency periods dramatically at a time when near-term sufficiency period market pricing

is historically high. The common theme is the utility will ask for a sufficiency period length that results in the lowest possible avoided cost rates, and the utility's request is typically adopted unless some stakeholder successfully litigates the issue. This case-by-case litigation approach benefits the utilities and nobody else. Thus, a fixed ramp-in is a reasonable policy to eliminate the utility gamesmanship under the existing policy.

The QF Trade Associations also support Staff's proposal that existing QFs should not be subject to the fixed ramp-in period and would thus be paid full capacity rates upon contract renewal.<sup>14</sup> The QF Trade Associations may propose a different or additional methodology to compensate existing QFs for the value they provide to a utility and reserve the right to propose other methodologies in Phase 2.

*iii. Non-emitting Capacity Resource:*

The QF Trade Associations are still evaluating the details of policies implementing a non-emitting capacity resource, but in general agree with Staff that a non-emitting capacity resource will be necessary for any utility that is no longer planning to acquire new greenhouse-gas-emitting resources to serve Oregon loads. However, the QF Trade Associations have significant concerns with some of the proposals that have been made on this topic and note that this is an area where the actual avoided costs could easily be significantly higher than the calculation that might result from adoption of the wrong policy. For example, adopting a four-hour battery energy storage system as the avoided capacity resource to replace a simple cycle combustion turbine could result in many unreasonable assumptions and adjustments that

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<sup>14</sup> See Staff's Straw Proposal, Table 1, B.1.

undervalue the avoided costs because a four-hour battery is not analogous to a simple cycle combustion turbine, which, like most QFs, can deliver power for longer than four hours. Notably, in the recent energy efficiency avoided cost proceeding, PGE and PacifiCorp proposed significantly different methods of valuing the avoided costs of a four-hour battery.<sup>15</sup> Additionally, depending on how it is modeled to be used, it may be debatable whether a grid-connected battery is truly a “non-emitting” resource that meets the objectives of Staff’s proposal. However, the QF Trade Associations are still evaluating this issue.

*iv. Last-in ELCC:*

The QF Trade Associations continue to oppose use of the “last-in” ELCC method and encourage Staff to reconsider this aspect of its Straw Proposal.

Looking first to existing QFs, those already built resources should not be evaluated as if they do not exist. Renewing QF resources have, for a long time, become embedded in the purchasing utility’s stack of capacity resources, and remain so embedded on renewal. They should not be plucked out and put in a holding pattern when they in fact continue to provide the capacity they have always provided. Therefore, the QF Trade Associations recommend that existing resources—including non-utility owned resources, such as the small-scale hydroelectric QFs that have been serving Oregon ratepayers since at least the 1980s—should be evaluated on

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<sup>15</sup> *See In re Commission Request for Approval of Energy Efficiency Avoided Cost Data to be Used by Energy Trust*, Docket No. UM 1893, Staff Report at 10-14 (Apr. 22, 2024) (explaining that PGE estimated energy efficiency avoided capacity costs of a four-hour battery of \$228/kW-year before later decreasing it to \$175/kW-year, but PacifiCorp proposed to significantly reduce that value through estimation of “net benefits” or “net capacity cost” of the battery by taking certain value streams of the battery into account).

the basis of the actual capacity contribution they provide standing alone. Alternatively, they should be evaluated on the basis of the marginal contribution to meeting peak demand needs measured at the time they were built, and not at the time of contract renewal. REC addressed this issue in detail in UM 2011 and does not repeat its comments here but instead incorporates them by reference.<sup>16</sup>

Similarly for new QFs, the QF Trade Associations maintain that this “last-in” ELCC rate calculation method unlawfully undervalues the avoided costs of the next incremental QF. This issue was briefed and argued at length by CREA in Docket No. UM 2011. In sum, PURPA requires that the QF must be paid the avoided capacity costs based on the capacity position of the utility at the time it commits to sell to the utility, not based on the utility’s hypothetical capacity position that would result with the uncommitted but planned resource acquisitions of the next 20 years.

In the time since Docket No. UM 2011, events have confirmed the flaws in this “last-in” policy for QFs. In CREA’s Docket No. UM 2011 comments, CREA detailed the flaw in the last-in method through use of PacifiCorp as an example because PacifiCorp had been permitted to use this method in its recent avoided cost rate update. Specifically, PacifiCorp’s 2021 IRP stated that its capacity factor (“CF”) calculations provide “marginal capacity contribution values . . . applicable to small incremental or decremental changes *relative to the composition of the IRP*

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<sup>16</sup> *E.g., In re Commission General Capacity Investigation*, Docket No. UM 2011, Renewable Energy Coalition’s Closing Comments at 1, 4-6 (Oct. 24, 2022).

*preferred portfolio in 2030,*<sup>17</sup> not the existing, committed resources. PacifiCorp’s IRP further acknowledged that “wind, solar, and energy storage have declining marginal capacity contribution values as the quantity of a given resource type increases.”<sup>18</sup> Its IRP also explained that the 2030 preferred portfolio included 1,902 MW of incremental solar not online at that time.<sup>19</sup> As PacifiCorp’s own IRP suggested, the incremental addition of 1,902 MW of solar drove down the solar CF value that was used to set the avoided cost rates being offered to QFs in 2022, and it was almost certainly responsible in significant part for the low capacity contribution values for solar resources in PacifiCorp’s proposed avoided cost rates. PacifiCorp’s capacity credits were extremely low and even included a proposal for a *negative* capacity credit for renewable solar QFs during on-peak hours.<sup>20</sup>

But we now know PacifiCorp will *not* acquire all of the renewable resources included in the 2021 IRP’s 2030 portfolio. Specifically, PacifiCorp recently announced it was canceling its 2022 All-Source Request for Proposals (“RFP”), which was intended to acquire solar and other resources in accordance with the 2021 IRP, and instead PacifiCorp will continue to operate existing natural gas and coal units, as allowed by a recent judicial stay of the Environmental

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<sup>17</sup> *In re PacifiCorp 2021 IRP*, Docket No. LC 77, PacifiCorp’s 2021 IRP, Attachment B, Vol. II, App. K at 219-220 (Sept. 1, 2021) (emphasis added).

<sup>18</sup> Docket No. LC 77, PacifiCorp’s 2021 IRP, Attachment B, Vol. II, App. K at 219-220.

<sup>19</sup> Docket No. LC 77, PacifiCorp’s 2021 IRP, Attachment C, Vol. I at 10. The IRP states that the then-ongoing 2020 All-Source RFP contained 1,302 MW of solar on its final shortlist, but that still left at least 600 MW of additional solar resources forecasted to be acquired before 2030 through the next RFP which began in 2022. *Id.* at 31 & 80-81.

<sup>20</sup> *See In re PacifiCorp Application to Update Schedule 37 QF Information*, Docket No. UM 1729, Comments of Community Renewable Energy Association, the Oregon Solar + Storage Industries Association, and the Renewable Energy Coalition, at 7-14 & 16-19 (June 22, 2022).

Protection Agency’s Utah Ozone Transport Rule.<sup>21</sup> Thus, the unreasonably low avoided cost rates currently being offered to solar QFs were based on the assumption that PacifiCorp would acquire major new renewable resources to be placed in service by 2030 that PacifiCorp will not now acquire. This situation is precisely why PURPA requires the Commission to calculate the avoided capacity costs based on the utility’s existing and committed resources, not based on hypothetical resources that may or may not be acquired for any number of different reasons.

v. *Hybrid Resources Pay-As-You-Go*

The QF Trade Associations are not entirely certain of Staff’s proposal on this point. With respect to the hybrid solar-plus-storage avoided cost rate method adopted late last year, the QF Trade Associations recommend that the utilities share information on how many QF developers have pursued the rate through requests for contracts. To the extent that the rate has not incited significant developer interest, the QF Trade Associations recommend revisiting certain elements of the rates and that the Commission should potentially adopt a fixed dollar-per-kW rate for storage QFs as opposed to a volumetric rate that was adopted on an interim basis.

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<sup>21</sup> See Docket No. LC 82, PacifiCorp’s Oregon Clean Energy Planning Supplement, at 3 (Apr. 1, 2024); *In re PacifiCorp Application for Approval of 2022 All-Source RFP*, Docket No. UM 2193, Notice of Cancellation, (Apr. 3, 2024) (cancelling the RFP and explaining “the 10th Circuit Court of Appeals’ stay of EPA’s disapproval of Utah’s state OTR plan removes the restrictions that limit energy production in the summer from natural gas and coal-fueled resources in Wyoming and Utah”); Docket No. UM 2193, Application at 1-2 (Sept. 2, 2021) (explaining the RFP was to acquire “approximately 1,345 megawatts (MW) of new generating resources and 600 MW of energy storage resources targeting a commercial operation date on or before December 31, 2026” in conformance with the 2021 IRP).



## C. Energy Valuation

**Staff's Straw Proposal:** *Sufficiency/Deficiency: Again, recognizing the scale of ongoing non-emitting resource procurement, Staff proposes to eliminate the sufficiency and deficiency period mechanism in energy valuation. Staff also proposes to derive avoided energy resource assumptions from actual utility procurements if available. If procurement data is unavailable, the utility should use independent and open-source data to develop the QF proxy characteristic assumptions. Staff proposes the NREL Annual Technology Baseline (ATB) for use in initial implementation.*

### **QF Trade Associations Comments:**

First, as noted above, the QF Trade Associations support revision to the current sufficiency period policy and reliance on transparent, third-party rate input data.

Second, however, the QF Trade Associations have concerns with use of “actual utility resource procurements” to establish avoided cost rates. This RFP information may lack transparency and predictability for QFs due to the highly confidential designation that utilities would typically assign to RFP bid prices. Additionally, an RFP bid price and resulting power purchase agreement (“PPA”) is not necessarily comparable to a QF PPA without significant other revisions to the Commission’s implementation of PURPA. An RFP bid price would typically be a levelized price and would typically be locked in for a 25-year power sale term or potentially even longer. In the case of a utility-ownership bid in an RFP, the revenue requirement of the resource would even be front loaded and “reverse levelized” due to the higher rate base value at the initial years of the resource, and the RFP bid price is basically a cost-plus bid that is not locked in as is the case with a QF PPA. With levelized prices (or reverse levelized prices) and longer power sale terms, an RFP bidder or utility self-bidder can bid a significantly lower price than if it were compensated as a QF with a non-levelized, 15-year fixed-price power

sale term.<sup>22</sup> The shorter 15-year fixed-price term and non-levelized prices are presumably intended to provide added value and reduced risk to the utility, and thus if those policies will continue the QF should be paid higher rates than RFP resources. In short, the QF Trade Associations do not agree that simply pulling numbers out of RFP bids is necessarily reflective of the avoided costs for a QF contract.

**D. Policy compliance values:**

**Staff's Straw Proposal:** *While Staff does not believe that RPS is driving resource need and acquisition, Staff does believe that QFs have the potential to provide additional value in a post-HB 2021 environment, namely the potential to avoid deliverability constraints and SSR compliance requirements.*

*i. Avoided Deliverability Issues: In order to better approximate the value of avoided transmission and distribution costs, cost assumptions for the avoided resource must reflect the avoided resource's proportional share of transmission build out estimated in the IRP preferred portfolio.*

*ii. Small Scale Resources (SSRs): Staff recognizes that PURPA is a meaningful tool to meet the state's SSR requirement, and proposes to reflect this value through a SSR compliance adder for <20 MW projects that attest to attaining SSR eligibility. Staff does not believe that there is enough data to develop a realistic, fully conceived SSR avoided resource for use in setting avoided cost rates. Therefore, Staff proposes to capture this value through a simple adder. This adder will only apply to HB 2021 utilities.*

*iii. Renewable Portfolio Standard (RPS): For resources generating Renewable Energy Credits (RECs) under the RPS, Staff proposes to allow the QF to negotiate its own price for REC sale to the utility.*

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<sup>22</sup> We note that a QF's power sale term could even be reduced to less than 15 years in the case of many delays in development under OPUC's PURPA standard contract rules. Although each RFP PPA may be unique, it is doubtful that winning RFP PPAs or utility ownership arrangements would so readily delete the power sale recovery term in the same manner as the OPUC's PURPA contracts.

**QF Trade Associations Comments:**

*i. Avoided Deliverability Issues:*

In general, the QF Trade Associations support Staff’s Straw Proposal on this subject. The Commission’s current policy requires QFs to pay for all network upgrades to interconnect their facilities with limited exceptions. Yet when the QF displaces other generation, it also displaces the transmission upgrades needed for that displaced generation. Thus, the QF Trade Associations agree, in general, that the avoided cost rates should reflect the avoided resource’s proportional share of transmission build out estimated in the IRP preferred portfolio. The Commission should ensure that this is a meaningful adder to the avoided cost rates because the network upgrade cost hurdle has been one of the main impediments to development in recent years.

*ii. Small Scale Resources (“SSRs”):*

In general, the QF Trade Associations support Staff’s Straw Proposal on this subject. The HB 2021 utilities are behind in their efforts to attain compliance with the small-scale renewable standard in ORS 469A.210 and offering an ORS 469A.210-compliant avoided cost rate is a necessary way to stimulate development that will enable the utilities to meet this requirement. While the utilities can also hold periodic RFPs for such resources, a standard avoided cost rate offered to such resources is more likely to send the price signals needed to incent development efforts for these types of resources. However, the QF Trade Associations do not understand Staff’s assertion that there is not “enough data to develop a realistic, fully conceived SSR avoided resource for use in setting avoided cost rates.” Such data is likely available to develop a realistic all-in avoided cost for the ORS 469A.210-compliant resource the

utilities could develop and operate absent a QF purchase. While the QF Trade Associations support the direction of Staff’s proposal to compensate these types of facilities for the full avoided costs, the QF Trade Associations are concerned that Staff’s proposal for a “simple adder” may lead to compensation that does not reflect the full avoided costs for ORS 469A.210-compliant capacity.

iii. *Renewable Portfolio Standard (“RPS”)*

The QF Trade Associations need additional information to understand Staff’s proposal to “allow the QF to negotiate its own price for REC sale to the utility,” but to the extent that Staff proposes to eliminate the renewable rate option to sell bundled RECs to a utility for additional compensation, the QF Trade Associations do not support that aspect of the Straw Proposal, as discussed above.

**E. QF Forecasting Practices**

**Staff’s Straw Proposal:** *For the purpose of increasing portfolio modelling accuracy and for use in other PURPA capacity contribution evaluations, Staff seeks to establish a consistent methodology for forecasting QF renewal and success rates. Staff proposes that utilities model QF renewal rates in their IRP to equal the 10-year historical renewal rate of QF projects at the time of IRP filing, assuming that QFs will continue indefinitely upon reaching their current expiration date at a size equal to the historical renewal rate. For example, should 75 percent of QF projects historically renew on a utility’s system, then each QF will be assumed to operate at 75 percent of its current size upon reaching its current expiration date. Should 10-years’ worth of historical data not be available at the time of IRP filing, the utility must calculate reliant IRP inputs using the assumption of a 75 percent QF renewal rate and QF project success rate.*

**QF Trade Associations Comments:**

The QF Trade Associations support Staff’s recommendation on the QF forecasting assumptions with one clarification. The QF Trade Associations support more accurate portfolio modeling. Historically, most of the utilities have used inaccurate QF planning assumptions,

which affects avoided costs. The QF Trade Associations support Staff’s recommendation to use 10-year historical data for the QF renewal rate and QF success rate or 75 percent if such data does not exist. However, the historical data should be based on reasonable, justifiable assumptions and accurate estimates. It is important for QF planning assumptions to be more accurate especially for renewing QFs because they provide capacity to the utility, which the utility relies upon.<sup>23</sup> The Commission has acknowledged that renewing QFs provide capacity value to the utility, and it would not be valued if the utilities assume no QF renewals in their planning assumptions.<sup>24</sup> Thus, the QF Trade Associations support Staff’s recommendation to more accurately model QF assumptions and use 10-year historical data that is reasonable, justifiable, and accurate for the QF renewal rate and QF success rate or 75 percent if such data does not exist.

## **F. Additional Issues**

### **1. Local Resiliency Rate Policy**

As discussed at the workshop, the Commission should also develop policies under which QFs can be elect to provide, and be compensated for, local resiliency benefits. HB 2021 expressed strong policy in favor of further development of renewable energy facilities providing community energy resilience benefits.<sup>25</sup> In its study on small-scale renewable facilities directed

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<sup>23</sup> See, e.g., Docket No. UM 1610, REC, CREA, Obsidian Renewables, and OneEnergy Pre-Hearing Brief at 17-18 (Sept. 2, 2015).

<sup>24</sup> Docket No. UM 1610, Order No. 16-174 at 19.

<sup>25</sup> See, e.g., 2021 Or Laws 508, § 2 (stating, “It is the policy of the State of Oregon . . . That electricity generated in a manner that produces zero greenhouse gas emissions also be generated, to the maximum extent practicable, in a manner that provides additional direct benefits to communities in this state in the forms of creating and sustaining meaningful

by HB 2021, the Oregon Department of Energy (“ODOE”) concluded that community energy resilience is one the key potential benefits that small-scale renewable energy facilities can offer.<sup>26</sup> ODOE’s report explains:

Resilience is the ability of power systems to withstand and rapidly restore power delivery to customers following non-routine disruptions of severe impact or duration. Resilience includes the ability to withstand and recover from deliberate attacks, accidents, or naturally occurring events such as earthquakes or catastrophic wildfires.

When considering the resilience of the power sector, utilities necessarily focus on the resilience of the power grid itself to withstand the effects of, or recover from, severe events that might disrupt service. Many other stakeholders, however, focus on the concept of community energy resilience – the ability of the community to provide power during an outage, particularly to support essential services. This latter concept, community energy resilience, was the primary focus of the workgroup when considering unique benefits and opportunities.<sup>27</sup>

Given that PURPA is the predominant means by which such small-scale renewable energy facilities have been developed, the Commission’s investigation of its PURPA rate policies

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living wage jobs, promoting workforce equity and increasing energy security *and resiliency*” (emphasis added)); *id.* at §§ 18-19 (requiring Oregon Department of Energy to complete a study evaluating barriers to small-scale renewable energy, including “[p]otential contributions of small-scale renewable energy projects to local energy resiliency”); *id.* at §§ 29-36 (providing grants supporting development of community renewable energy projects that promote local energy resilience); *see also id.* at § 29(2) (defining “community energy resilience” as “the ability of a specific community to maintain the availability of energy needed to support the provision of energy-dependent critical public services to the community following nonroutine disruptions of severe impact or duration to the state’s broader energy systems”).

<sup>26</sup> 2022 *Small-Scale and Community-Based Renewable Energy Projects Study*, Oregon Dep. of Energy, at i (Sept. 2022), <https://www.oregon.gov/energy/Data-and-Reports/Documents/2022-Small-Scale-Community-Renewable-Projects-Study.pdf> (“the workgroup members determined that small-scale projects can help Oregon achieve important goals, such as improving equitable access to clean energy, making more efficient use of state land resources, *supporting community energy resilience*, and increasing local economic performance.” (emphasis added)).

<sup>27</sup> *Id.* (emphasis omitted).

following on the heels of HB 2021 should include development of PURPA policies that are designed to promote this important local resiliency benefit that can be offered from such facilities.

The Commission’s current policies have not facilitated development or operation of QFs as local resiliency resources even though benefits could be offered without harm to the purchasing utility under the PURPA contract. For example, one CREA member has investigated an arrangement where a solar-plus-storage QF eligible for a standard contract would normally sell its output to the purchasing utility under a standard contract, but at times that the purchasing utility’s system is down (e.g., wildfire outage, earthquake, etc.) the facility could supply power through microgrid operations directly to essential local facilities (e.g., a fire station, police station, etc.).<sup>28</sup> The purchasing utility could not accept the power during the outage because its system is down, and thus there would be no harm to the purchasing utility or its customers if the power were delivered to support local resiliency. However, it is difficult for a project proponent to move forward without any clarity on the Commission’s policies governing such an arrangement, such as whether the utility must allow for delivery of power to a third party and

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<sup>28</sup> This is similar to an arrangement PGE and PacifiCorp appear to already be operating themselves at certain isolated locations according to a presentation made during development of ODOE’s study. *See Small-Scale Renewable Energy Projects Study Meeting #3: Benefits and Costs*, ODOE, at slides 51-101 (June 28, 2022), <https://www.oregon.gov/energy/Data-and-Reports/Documents/2022-06-28-SSREPS-Benefits-and-Costs-Workshop-PPT.pdf> (discussing PGE’s Beaverton Public Safety Center Microgrid and PacifiCorp’s Redwood Coast Microgrid, both of which appear to utilize a solar-plus-storage facility that feeds a microgrid connected to essential local services during grid outages).

how the QF would be compensated for the valuable resiliency energy it supplies by the utility and/or the local essential services facilities.

The Commission’s standard contract adds to the confusion by containing unclear language on how such a QF could implement such an arrangement to deliver to local facilities during times of a grid outage. The recently approved standard contract states as follows on this subject:

4.3 No Sales to Third Parties.

During the Term, Seller will not sell any Net Output, energy, capacity or Environmental Attributes from the Facility to any party other than Utility; provided, however, that this restriction does not apply during periods when Utility is in default under this Agreement because it has failed to accept or purchase Net Output as required under this Agreement or, with respect to Environmental Attributes, to the extent title to such Environmental Attributes does not pass to Utility under this Agreement.<sup>29</sup>

Thus, a purchasing utility may argue any deliveries made in support of local resiliency are a breach of the standard contract, even in times when the utility is unable accept the power from the QF or deliver power to the essential local services.

At the workshop, Staff inquired whether this is a matter that should be left to non-standard contracts, but the QF Trade Associations submit that the Commission should establish clear policies and a standard contracting option to promote development of small-scale renewable facilities providing local resiliency services. While certain applications may ultimately require a non-standard option, the basic resiliency framework could be implemented

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<sup>29</sup> *In re Portland General Electric Company, PacifiCorp, and Idaho Power Company, Joint Utilities Application for Approval of Proposed Schedules and Standard Power Purchase Agreement for Qualifying Facilities up to 10 MW*, Docket No. UM 2299, Joint Utilities’ Compliance Filing, PPA at § 4.3 (Apr. 11, 2024).



with standard terms, conditions, and rates. Absent a standard option, it is clear that far less QF contracts supporting resiliency will be able to be successfully negotiated on a case-by-case basis. The legislature provided clear policy directive to promote development of such facilities, or retrofitting existing facilities that may be able to provide local resiliency benefits, and this is the appropriate proceeding for the Commission to do so by implementing a standard option.

**2. The Commission Should Require Fixed-Price Power-Sale Terms of at Least 20 Years.**

The QF Trade Associations reiterate their ongoing position that the Commission should revise its fixed-price power-sale term by offering QFs terms of at least 20 years. As we have previously demonstrated, Oregon’s mini-PURPA statute affirmatively requires that the utilities offer fixed-price power-sale terms of 20 years.<sup>30</sup> Implementing such a policy is appropriate at this time in response to the policy directives articulated by the legislature in HB 2021 to promote development of renewable energy resources in Oregon, especially small-scale renewable energy

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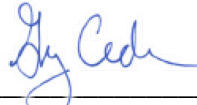
<sup>30</sup> See *In re Rulemaking to Address Procedures, Terms, and Conditions Associated with QF Standard Contracts*, Docket No. AR 631, Joint Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Rules Group 1, at 20-22 (Mar. 11, 2022) (explaining that ORS 758.525(1) requires utilities to provide a schedule of avoided costs “over at least the next 20 years,” ORS 758.525(2) entitles QFs to sell energy and capacity at the utility’s “projected avoided costs,” and the legislative history confirms that one of the primary purposes of Oregon’s mini-PURPA statute was to “require avoided costs to be forecasted and, if desired by the facility owner, obligated under contract for at least the next twenty years”); see also Testimony, Senate Committee on Energy and Environment, June 15, 1983, Ex. B at 3 (Statement of David Philbrick, ODOE); Audio Recording, Senate Committee on Energy and Environment, H.B. 2320, June 15, 1983, Tape 168, Side A (comments of Senator Steven Starkovich citing ODOE’s summary for the intent of the legislation); Audio Recording, Senate Committee on Energy and Environment, H.B. 2320, June 15, 1983, Tape 168, Side A (comments of Representative William Bradbury), <http://records.sos.state.or.us/ORSOSWebDrawer/Record/7372560>.

facilities and facilities that may be able to provide local resilience benefits. While a 20-year fixed-price term is required by law for all QFs, it is further needed to provide the financial incentives to achieve Oregon’s goals for smaller renewable energy facilities as discussed above.

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Respectfully submitted,

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