Sanger Law PC
1117 SE 53rd Ave. Portland, OR 97215 tel (503) 756-7533 fax (503) 334-2235 sidney@sanger-law.com

June 20, 2016

Via Email

Oregon Public Utility Commission
201 High St SE
Salem, Oregon 97301

Re: Renewable Energy Coalition Comments
In the Matter of the Public Utility Commission's Recommendation for Portfolio Options pursuant to ORS 757.603(2) and OAR 860-038-0220
Docket No. UM 1020

The Renewable Energy Coalition (the "Coalition") submits these comments regarding the Oregon Public Utility Commission (the "Commission" or "OPUC") Staff's ("Staff") questions to stakeholders in the above-referenced proceeding. Staff is seeking input on the appropriateness of "comingling" funds collected from ratepayers participating in the utilities' voluntary grant funding programs. The Coalition appreciates Staff's consideration of its comments and recommends that the Commission not prohibit or impose any limitations on the commingling of funds used to finance renewable energy facilities that are not owned by electric utilities.

The Coalition represents nearly forty small power producers with over 50 qualifying facilities ("QFs") throughout the Northwest. Several types of entities are members of the Coalition, including irrigation districts, water districts, special service districts, corporations, cooperatives, and individuals. QFs are generally renewable resources and provide utilities with an expanded resource base to counter the traditional reliance on coal or natural gas. Coalition members sell power as QFs and receive various funding sources to bring their projects online and continue their operations, which include the Energy Trust of Oregon's ("ETO") public purpose funds, other voluntary renewable funds, federal and state tax credits, and government grants.

The Commission directed Staff to evaluate the appropriateness of comingling voluntary ratepayer funds with other general ratepayer funds for projects described as "opportunistic" that are likely to fall outside the scope of a utility's Integrated Resource Plan ("IRP").[1] At the March 22, 2016 Public Meeting, Commissioner Savage acknowledged that SB 1547 "upped the ante" on the Renewable Portfolio Standard ("RPS").[2] The Commission encouraged utilities to take advantage of new RPS opportunities as they present themselves, but warned that it is difficult to evaluate whether projects were least cost and risk if they have not been fully vetted in the utility's

1 Re OPUC Recommendations for Guidelines and a Distribution and Reporting

2 Mar. 22, 2016 Public Meeting at 11:05.

IRP process.[3] The Commission expressed concerns about allowing utilities to rate base or otherwise own new RPS projects that comingle funds and directed Staff to investigate.

At the April 21, 2016 Public Meeting, Portland General Electric ("PGE") sought clarification that ETO funds should be included in Staff's investigation and asked that QF avoided cost payments also be considered.[4] Neither Staff nor the Commission objected to including QFs in Staff's investigation. As the Coalition explains below, however, QF projects should not be included because QFs are not ratepayer funded. As such, with respect to "comingling" funds, payments made to QFs under a Power Purchase Agreement ("PPA") should not be treated any differently from any other PPA payments. Even if QFs were considered ratepayer funded, there is no legitimate reason to prevent these projects from using all available funds to come on line and continue to operate.

1. General Ratepayer Funds Used to Support Small Scale Renewable Projects

Staff has identified the ETO public purpose funds, PURPA[5] QF PPAs, and utility-owned-and-rate-based projects as those that use general ratepayer funds to support small scale renewable projects. QFs, however, are not ratepayer funded. Utilities purchase QF power based on their avoided cost rate, which is generally based on the costs to build a new power plant and purchase power from the market.[6] As such, ratepayers are not "funding" QFs by paying for the power that a utility purchases from it. Because the avoided cost rates paid to QFs are better considered power costs rather than ratepayer funding, they do not embroil the concerns raised by the Commission.

---

3 Id. "My concern is right now we've upped the ante on the RPS. I want to make sure that if we are meeting the RPS at the lowest cost and risk and we are using the best combination of projects to achieve the RPS. If you are talking about rate-basing or if you are talking about a utility developing under this voluntary program … I do not support a guideline that will allow a utility to rate base, I don't support a guideline that will allow us to use alternate, other ratepayer funds to comingle them with these projects … On the other hand, I'm more than open if there are projects out there that you have opportunities for, bring it into the RFP and we will vet it against all possible options that are available to you in complying with the RPS. That's where I think these projects should be."

4 Apr. 21, 2016 Public Meeting at 28:10, 28:45.

5 The Public Utility Regulatory Act of 1978 ("PURPA") requires utilities to purchase power from QF developers.

6 Oregon law and FERC policy require utilities to purchase power from QFs based on the utilities' full avoided cost. ORS § 758.525(2)(b); Amer. Paper Institute, Inc. v. American Elec. Power Serv. Ass'n, 461 U.S. 402, 406, 412-17 (1983). Avoided costs are based on a utility's incremental costs that, but for the purchase from the QF, the utility would generate or purchase from another source. 16 U.S.C. § 824a-3(d).

In considering access to voluntary renewable funds, QFs should not be treated any differently than any other independent power producer selling power to the utilities under a PPA. The Coalition notes that there is no argument that other PPA payments should be included in Staff's investigation. When a utility buys power from a third party, ratepayers are not "funding" the generation owner, but simply paying the utility's costs of providing electric service. There is no difference between a utility passing on these and other costs to ratepayers. QFs are simply another cost that the utility passes on to its customers. The only difference is that the price paid to QFs is set by the Commission while the utilities' other costs passed on to customers are typically based on a price determined by negotiations or through a request for proposal. The fact that QF rates are administratively determined[7] should not make them "ratepayer funded," while utility purchases of power in the market are not.

2. Intended Purpose of Voluntary Grant Funded Programs and General Ratepayer Funded Renewable Programs

The various ratepayer-funded programs under investigation seek to encourage new and support existing community-based renewable projects. Co-funding therefore supports these various programs as well as Oregon's broader energy goals.

3. Whether "Comingling" Funds Compromises the Intended Purpose of Either General or Voluntary Programs

In the absence of conflict, there is no reason for compromise. Here, the intended purposes of the ratepayer-funded programs are complementary. Thus, co-funding from the various programs does not compromise the intended purpose of any particular program. Of note, other funding sources are also available to independent power producers, including production tax credit, investment tax credit, Bonneville Environmental Fund, as well as city, county, state, and federal grant money. Non-utility owned power generators (including QFs) should be able to access and use any available funding source regardless of whether they are selling to the utilities or in the market.

4. Whether Combining Voluntary and General Ratepayer Funds Leads to Additional Benefits

Combining Oregon's different funding programs increases the likelihood of success for renewable energy projects. Should the Commission choose not to allow QF

---

[7] The Commission has explained, "the goal of calculating avoided costs is to accurately estimate the costs a utility would incur to obtain an amount of power that it purchases from a QF, either by the utility's self-generation or by purchase from a third party." Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005).

projects to comingle funds, naturally fewer renewable projects, including QFs, will be successful going forward. This would be inconsistent with Oregon law that directs the Commission to "Increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens."[8] Limiting the ability of non-utility owned QFs to access voluntary renewable funds would also be inconsistent with the Commission's responsibility to remove, rather than raise, barriers to the diverse ownership of renewable energy sources.[9]

5. Expectations for Customers Participating in Voluntary Funding

The Coalition does not disagree at this time with PacifiCorp's and PGE's summaries of their customer expectations. The Coalition, however, strongly doubts that customers participating in the voluntary renewable energy programs would support restrictions that prevent renewable energy projects from taking advantage of all legal funding sources to better ensure the projects' economic viability.

6. Administration and Reporting of Comingled Funds

The Coalition supports the comments of PacifiCorp in that there are no concerns regarding the administration and reporting of comingled funds. Specifically, "Utilizing multiple funding sources for funding specific projects does not impact the administration of individual funds for specific projects. The administration of ETO and Blue Sky complement one another to enable projects to be built and funded."[10]

7. Comingling Existing and New Policies in the Wake of SB 1547

SB 1547 merely amplifies the sentiment behind Oregon's various grant funding programs and should not be used as an excuse to remove incentives that Oregon customers have been supporting for over a decade. If the Commission determines that renewable projects, including QFs, must choose between these different funding sources, it will do so at the peril of future and existing renewable energy projects.

Sincerely,

Sidney Villanueva

Sidney Villanueva

---

8 ORS § 758.515(3)(a).
9 ORS § 469A.075(4)(d).
10 PacifiCorp's Responses to Staff's Questions at 3.