

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2032

In the matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Treatment of
Network Upgrade Costs for Qualifying
Facilities

NORTHWEST AND
INTERMOUNTAIN POWER
PRODUCERS COALITION,
RENEWABLE ENERGY COALITION,
AND COMMUNITY RENEWABLE
ENERGY ASSOCIATION’S
RESPONSE TO JOINT UTILITIES’
STRICKEN TESTIMONY

I. INTRODUCTION

The Northwest and Intermountain Power Producers Coalition, the Renewable Energy Coalition, and the Community Renewable Energy Association (together referred to as the “Interconnection Customer Coalition”) file this Response to Idaho Power Company, PacifiCorp, dba Pacific Power, and Portland General Electric Company’s (the “Joint Utilities”) Revised Direct Testimony filed on October 19, 2020.

Administrative Law Judge (“ALJ”) Kirkpatrick issued a ruling on October 7, 2020, granting in part the Interconnection Customer Coalition’s motion to strike portions of the Joint Utilities’ Testimony submitted on August 24, 2020 (the “Ruling”). The Ruling instructed the Joint Utilities to strike several portions of specifically selected testimony because the testimony consisted of legal interpretations and applications of the law that are more suitably presented in legal brief.¹ The ALJ’s Ruling did not invite the Joint Utilities’ to revise the testimony to be stricken. Regardless, the Joint Utilities filed

¹ Ruling at 9 (Oct. 7, 2020).

revised direct testimony, which struck some of the carefully identified language, but on eight separate occasions, it rewrote (or ignored) other portions that should have been stricken pursuant to the Ruling.

The Interconnection Customer Coalition asks the Oregon Public Utility Commission (“OPUC” or the “Commission”) to uphold the Ruling and require the Joint Utilities to strike the testimony they were supposed to strike. Allowing the Joint Utilities’ to ignore the Ruling creates a bad procedural precedent, and it would require the Interconnection Customer Coalition and the Commission to waste additional resources by addressing the Joint Utilities’ decision not to revise their testimony properly. The Interconnection Customer Coalition is prejudiced because their testimony is currently due on October 30, 2020, but they do not know what testimony they need to respond to, and they may now need to respond to the Joint Utilities’ statements that were supposed to be stricken.

II. RESPONSE

A. Permitting the Joint Utilities to Ignore a Ruling and Revise Its Testimony Will Create a Harmful Procedural Precedent That is Prejudicial to Future Intervenors and Opposing Parties

The Joint Utilities have ignored the Ruling to strike portions of their testimony, instead preferring to “revise the noted sections to bring them into compliance” with the Ruling.² The Joint Utilities’ cite no authority in their filing that allows them to proceed in this manner. In contrast, in the Blue Marmot case, the parties with stricken testimony

² Joint Utilities’ Revised Direct Testimony at 1.

specifically and directly complied with the ALJ ruling by striking rather than re-writing the testimony.³

If the Joint Utilities wanted to independently revise and add to their testimony as they see fit, then the proper procedural step would have first been to comply with the Ruling by filing the correct, fully stricken testimony. After properly complying with the Ruling, the Joint Utilities could have requested certification, filed a motion to clarify, or otherwise sought leave of the Commission to file revised testimony. The case could move forward with the correctly filed testimony in the record, rather than the parties continuing to litigate a matter already settled.

If the Joint Utilities' revised direct testimony is allowed to remain as is, then the precedent will create future procedural complications surrounding motions to strike. For example, when an ALJ grants a motion to strike portions of a party's testimony, the moving party does not anticipate having to answer the stricken pieces of testimony in its own reply testimony. If parties are now allowed to revise their testimony instead of striking it as ordered, then the moving party will have little time or resources to answer the revisions adequately in its own testimony. Similarly, the party revising its testimony has an opportunity to strategically revise or add to its testimony (including new policy recommendations). This will require the moving party with the choice of re-litigating whether the new testimony should also be stricken and/or responding to new arguments.

Additionally, allowing the Joint Utilities to revise rather than strike the testimony creates an atmosphere where parties have no clear understanding of what it can and

³ *Blue Marmot v. PGE, Docket Nos. UM 1829, Revised Opening Testimony* (Dec. 20, 2017) (consolidated with Docket Nos. 1830, 1831, 1832, 1833).

cannot revise after a ruling on a motion to strike. If such an unclear precedent is set now, then the next party that tries to revise its testimony may attempt to push the boundaries of what is admissible further.

B. Appendix A Identifies the Testimony that the Joint Utilities Failed to Strike

Accordingly, the Commission should not allow the Joint Utilities to submit the revisions cataloged in Appendix A as testimony. Appendix A specifically identifies the testimony that the ALJ ordered be stricken, and the revised testimony that should also be stricken, as well as the instances in which the Joint Utilities decided to completely ignore the Ruling by not striking or revising the testimony.

III. CONCLUSION

To prevent any prejudicial effect or harmful precedent, the Commission should require the Joint Utilities' to strike the testimony in exact accordance with its Ruling.

Dated this 27th day of October 2020.

Respectfully submitted,

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**Appendix A
SUMMARY OF REVISIONS**

The ALJ Ruling	The Joint Utilities Revisions
Joint Utilities/100, Vail-Bremer-Foster-Laron-Ellsworth/15: 9-13: Strike the passage "PURPA mandates a very specific arrangement: Under PURPA , a directly interconnected QF arranges for its interconnection with the utility's system; the utility is then required by PURPA to make transmission service arrangements to deliver the power from the QF's point of delivery to the utility's load using firm transmission service," including fn. 2, "See, e.g., Pioneer Wind Park I, LLC, 145 FERC ¶ 61,215 at n. 73 (Dec. 16, 2013).	The Joint Utilities only struck "mandates a very specific arrangement: Under PURPA," "by PURPA," and the footnote. They also added "In the Joint Utilities' implementation of" before the first mention of PURPA in that language to strike. * Stricken language in bold to the left to help visualize lack of change.
Joint Utilities/100, Vail-Bremer-Foster-Laron-Ellsworth/18: 14-17: Strike the question and answer "Q. What type of interconnection service must an Oregon QF obtain? A. The Commission's QF-LGIP requires a QF to obtain NRIS. A QF's interconnection studies will therefore identify both ER and NR Network Upgrades triggered by the QF's interconnection."	The Joint Utilities only struck "must" from the question and replaced it with "do the Joint Utilities require." In the answer, they only struck, "The Commission's QF-LGIP" and replaced it with "The Joint Utilities require a". * Stricken language in bold to the left to help visualize lack of change.
Joint Utilities/200, Wilding-Macfarlane-Williams/3: 17-18: Strike the sentence "Current Commission policy is consistent with PURPA, state regulatory policy, and Oregon law."	Joint Utilities rewrote the sentence to read "The Joint Utilities recommend that current Commission policy regarding the allocation of QF interconnection costs be maintained."
Joint Utilities/200, Wilding-Macfarlane-Williams/4: 12-15: Strike the phrase, "sound state regulatory policy and the discharge of the Commission's statutory duties would themselves require the allocation of interconnection-driven Network Upgrades to the interconnecting generators that cause them."	Joint Utilities rewrote the sentence to read "Even if PURPA did not impose on this Commission the obligation to ensure customers are held indifferent to the purchase of QF power, we would nevertheless support the allocation of interconnection-driven Network Upgrades to the interconnecting generators that cause them."
Joint Utilities/200, Wilding-Macfarlane-Williams/4: 20-21, 5:1: Strike the sentence, "Finally, allocating QFs' interconnection-driven Network Upgrade costs to QFs, rather than utility customers, is consistent with the Commission's statutory duty to ensure customer rates are just and reasonable."	Joint Utilities rewrote the sentence to read "Finally, the Joint Utilities believe that allocating QFs' interconnection-driven Network Upgrade costs to QFs ensures that customer rates are just and reasonable."
Joint Utilities/200, Wilding-Macfarlane-Williams/6: 17-18: Strike the phrase, "thus ensuring that the utility's purchase of QF power is	Joint Utilities struck this language but added language to the following sentence, so it now reads, "In addition to the benefits described above,

<p>consistent with PURPA's customer indifference standard.”</p>	<p>this policy encourages the economically efficient development of QFs.”</p>
<p>Joint Utilities/200, Wilding-Macfarlane-Williams/7: 3-12: Strike the question and answer beginning, “QFs have argued that FERC's standard generator interconnection cost-allocation policies promulgated pursuant to the Federal Power Act ...”</p>	<p><u>Joint Utilities did not strike the question at all</u> and replaced the answer with the following statement “No. The Commission should adopt interconnection cost-allocation policies that are specifically tailored to further Oregon state priorities and the requirements of PURPA.”</p>
<p>Joint Utilities/200, Wilding-Macfarlane-Williams/8: 8-15: the question and answer beginning, “What do FERC’s PURP A regulations say about QF interconnection costs.”</p>	<p>Joint Utilities rewrote the question to read, “Has FERC promulgated PURPA-specific interconnection regulations applicable to directly-connected QFs?” Then they struck their answer and quoted FERC regulations regarding obligations to pay and reimbursement of interconnection costs.</p>