

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 AR 660

4 In the Matter of )  
5 Adoption of Rules Relating to ) STAFF’S RESPONSE TO  
6 Resource Adequacy. ) NIPPC’s MOTION TO  
7 ) MODIFY SCHEDULE  
8 )

9 **INTRODUCTION**

10 On January 18, 2023, the Northwest & Intermountain Power Producers Coalition  
11 (NIPPC) submitted a motion requesting that the Commission modify the schedule in this docket,  
12 AR 660, to extend the comment deadline and provide for a structured schedule.<sup>1</sup> Staff supports a  
13 comment deadline extension and does not oppose NIPPC’s motion to *request* that parties file  
14 comments in a structured manner. However, Staff cautions that this should not prevent members  
15 of the public from providing comment up until the comment deadline, and that this should not  
16 serve as precedent for future public comment periods in rulemaking proceedings.

17 Public participation should be encouraged in rulemaking proceedings, and structured  
18 schedules could discourage participation from less sophisticated parties. Moreover, the  
19 Administrative Procedures Act (APA)<sup>2</sup> does not permit the Commission to reject any comments  
20 that are filed before the comment deadline, even if they do not comport with an adopted  
21 schedule.

22 **I. The Commission Must Accept All Comments Received by the Comment Deadline.**

23 The APA requires an agency that proposes “to adopt, amend, or repeal a rule” to “give  
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25 <sup>1</sup> See *In the Matter of Adoption of Rules Relating to Resource Adequacy*, Docket No. AR 660,  
26 Northwest & Intermountain Power Producers Coalition’s Motion to Modify Schedule (January  
18, 2024).

<sup>2</sup> See ORS §§ 183.325 to 183.410.

1 interested persons reasonable opportunity to submit data or views.”<sup>3</sup> The Commission’s rules  
2 provide that “[a]ny person may file written comments on the proposed rule by the date identified  
3 in the rulemaking notice.”<sup>4</sup> Once notice has been issued and a comment deadline established, the  
4 Commission cannot “extend that deadline for another agency or person unless the extension  
5 applies equally to all interested agencies and persons.”<sup>5</sup>

6 Docket No. AR 660 is a rulemaking proceeding, not a contested case. The purpose of the  
7 public comment period is to solicit comment from the public, and the process should be  
8 structured in a way that encourages participation from the public, not only stakeholders who can  
9 afford legal representation. Creating a structured schedule may discourage members of the  
10 public from participating because they might not fully understand the process and their right to  
11 participate.

12 Admittedly, the topic of resource adequacy is extremely technical, which makes it likely  
13 that comments from the general public will be minimal. However, resource adequacy is  
14 fundamental to a reliable power system, which means it is an issue of extreme importance to  
15 every individual and organization in Oregon. As such, the public deserves the ability to  
16 participate in this proceeding regardless of whether they are represented by an attorney or fully  
17 understand practice and procedure before the Commission.

18 **II. The Commission has held extensive process on the proposed resource adequacy**  
19 **rules.**

20 Staff also notes that the proposed resource adequacy rules were developed through a  
21 multi-year, multi-phase process with numerous opportunities for stakeholders to provide input.  
22 The precursor to AR 660 was docket UM 2143, which the Commission opened on January 12,  
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25 <sup>3</sup> ORS § 183.335(3)(a).

26 <sup>4</sup> OAR 860-001-0210.

<sup>5</sup> ORS § 183.335 (14).

1 2021.<sup>6</sup> Throughout the UM 2143 docket, OPUC Staff held seven workshops<sup>7</sup> and provided  
2 numerous comment opportunities. Staff recognizes the extreme importance of resource  
3 adequacy and took the appropriate amount of time to solicit input from the public, including  
4 NIPPC.<sup>8</sup>

5 Despite the fact that Staff has provided far more process than is legally required, Staff  
6 values input from all interested stakeholders and supports an extension of the comment deadline  
7 if it can enable a more robust and transparent process.

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### CONCLUSION

10 Resource adequacy is fundamental to a reliable energy system. Neither Staff, nor the  
11 Commission, has taken its responsibility in developing these proposed resource adequacy rules  
12 lightly. Staff developed the proposed rules through an extensive, multi-year process in which  
13 stakeholders had numerous opportunities to engage. Staff welcomes any and all additional  
14 comments on the proposed rules up until the comment deadline and supports a schedule that

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19 <sup>6</sup> *In the Matter of Public Utility Commission of Oregon, Investigation into Resource Adequacy in Oregon*, Docket No. 2143, Order No. 21-014 (January 13, 2021).

20 <sup>7</sup> *See Investigation into Resource Adequacy in Oregon*, Docket No. 2143, Staff’s Workshop  
21 Announcement (Monday August 16, 2021); Staff’s Workshop Announcement (Wednesday,  
22 October 27, 2021); Staff’s Workshop Announcement (Tuesday, December 14, 2021); Staff’s  
23 Workshop Announcement (Friday, April 8, 2022); Staff’s Workshop Announcement (January  
24 10, 2023). Staff’s Workshop Announcement (April 6, 2023); Staff’s Workshop Announcement  
25 (June 30, 2023).

26 <sup>8</sup> NIPPC filed five sets of comments through the course of Docket No. 2143. *See Investigation into Resource Adequacy in Oregon*, Docket No. 2143, NIPPC Comments on Staff Report (September 18, 2023); NIPPC's Comments on Staff's Draft RA Rules (June 12, 2023); NIPPC's Comments on Updated Straw Proposal (March 3, 2023); NIPPC's comments on Staff Initial Report (April 14, 2022); NIPPC's comments on RA Straw proposal (November 18, 2021). NIPPC also filed comments in this docket, *In the Matter of Adoption of Rules Relating to Resource Adequacy*, Docket No. AR 660, Northwest & Intermountain Power Producers Coalition’s Opening Comments on Proposed Rules (January 8, 2024).

1 provides for a fair and robust process. As such, Staff supports the comment deadline extension  
2 and does not oppose NIPPC’s motion as long as it can be granted in way that complies with the  
3 APA.

4 DATED this 19<sup>th</sup> day of January 2024.

5 Respectfully submitted,

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7 Attorney General

8 */s/ Betsy Bridge*

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