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September 5, 2018

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket AR 593 – Rulemaking Regarding Power Purchases by Public Utilities from Small Qualifying Facilities

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic copy of the Joint Utilities' Final Comments.

Please contact this office with any questions.

Sincerely,

Alisha Till
Legal Assistant

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 593

In the Matter of:

Rulemaking Regarding Power Purchases by
Public Utilities from Small Qualifying
Facilities.

JOINT UTILITIES' FINAL COMMENTS

1 Pursuant to the Administrative Law Judge's July 31, 2018 Ruling, Idaho Power Company
2 (Idaho Power), PacifiCorp d/b/a Pacific Power, and Portland General Electric Company (PGE)
3 (collectively, Joint Utilities) submit these Final Comments to the Public Utility Commission of
4 Oregon (Commission) regarding the proposed revisions to Oregon Administrative Rules (OAR)
5 Division 29, the Commission's current rules implementing the Public Utility Regulatory Policies
6 Act (PURPA), as contained in the Notice of Proposed Rulemaking filed with the Secretary of State
7 on July 26, 2018 (Proposed Rules). The Joint Utilities filed Initial Comments on August 21, 2018,
8 containing our recommended revisions to the Proposed Rules and indicating general support for
9 the Proposed Rules, with only a few exceptions. These Final Comments will respond to the
10 comments filed by the Renewable Energy Coalition and the Community Renewable Energy
11 Association (collectively, Joint QFs) on August 21, 2018, as well as the oral comments presented
12 by Commission Staff and the Joint QFs at the rulemaking hearing on August 23, 2018.

13 **I. Final Comments**

14 **a. OAR 860-029-0010(1): Definition of Avoided Costs**

15 The definition of "avoided costs" in the current rules reads:

16 "Avoided costs" means the electric utility's incremental costs of electric energy or
17 capacity or both which, but for the purchase from the qualifying facility or
18 qualifying facilities, the electric utility would generate itself or purchase from

1 another source and shall include any costs of interconnection of such resource to
2 the system.

3 The Proposed Rules delete the phrase “and shall include any costs of interconnection of such
4 resource to the system,” but Staff’s August 21, 2018 comments recommend adding this language
5 back in. At the hearing, Staff expressed concern that deleting the “costs of interconnection”
6 language could lead to unintended consequences, and the Joint QFs stated their opposition to
7 deleting the language.

8 As explained in our Initial Comments, the Joint Utilities support removing the reference to
9 costs of interconnection because doing so makes the definition consistent with the federal rules
10 and Oregon statutes,¹ and prevents any confusion that may be caused by listing just one factor of
11 many that should be included in avoided costs. Staff’s concern regarding the potential for
12 unintended consequences can be addressed by including a statement in the order adopting the rules,
13 making clear that the revision to this definition is not intended to represent a substantive change
14 in Commission policy.

15 **b. OAR 860-029-0010(15): Joint QFs’ Request to Clarify the Term “Firm**
16 **Energy”**

17 The existing rules contain a definition of “Firm Energy” that the Proposed Rules do not
18 alter: “Firm energy means a specified quantity of energy committed by a qualifying facility to an
19 electric utility.”² The Joint QFs ask the Commission to make a substantive change to the existing
20 rules to “clarify that the Commission’s implementation of PURPA offers long-term fixed-price
21 rates to all QFs, including intermittent QFs.”³

22 The Joint Utilities oppose this request for clarification, which appears to be an attempt to
23 preemptively obtain resolution on a substantive issue the Commission has not yet considered or
24 addressed. Notably, the Joint QFs do not cite to a Commission order containing the language they
25 now propose to include in the rules, or even to an order discussing this principle. The Joint QFs

¹ 18 CFR 292.101(b)(6); ORS 758.505(1).

² OAR 860-029-0010(15).

³ Joint QFs’ Comments at 13 (Aug. 21, 2018).

1 argue that the existing definition, when read in conjunction with Proposed Rule 860-029-0130(4),
2 could create confusion.⁴ However, the definition of “Firm Energy” is in the existing rules, and
3 Proposed Rule 860-029-0130(4) simply codifies, word-for-word a portion of Order No. 07-360.⁵
4 Therefore, the Proposed Rules simply implement existing Commission policy, and the resolution
5 of additional issues that the Joint QFs seek is outside the scope of this rulemaking. To be clear,
6 the Joint Utilities do not oppose the current Proposed Rules related to these topics; the Joint
7 Utilities oppose the Joint QFs’ request to obtain “clarification” that goes beyond the rules and
8 beyond established Commission precedent.

9 **c. OAR 860-029-0010: Joint QFs’ Request to Add Definition for Nameplate**
10 **Capacity**

11 The Joint QFs recommend that the Commission include in the rules the definition of
12 “nameplate capacity” adopted in Docket No. UM 1129:

13 The full-load electrical quantities assigned by the designer to a generator and its
14 prime mover or other piece of electrical equipment, such as transformers and circuit
15 breakers, under standardized conditions, expressed in amperes, kilovoltamperes,
16 kilowatts, volts, or other appropriate units. Usually indicated on a nameplate
17 attached to the individual machine or device.⁶

18 The Joint Utilities do not oppose including the stipulated definition from UM 1129 in the rules,
19 with the understanding that the definition of a term in the rules and the definition of that same term
20 in the utilities’ Commission-approved QF schedules and power purchase agreements (PPAs) need
21 not match exactly.

22 However, the Joint QFs also suggest that the Commission clarify “the current practice in
23 the industry” of measuring a solar QF’s output in alternating current (AC),⁷ and the Joint Utilities
24 oppose this proposal to substantively revise the stipulated definition. The Commission has not yet

⁴ Joint QFs’ Comments at 14.

⁵ *In the Matter of Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 07-360, App’x A at 2 (Guideline 4) (Aug. 20, 2007). And, as discussed below, the Joint QFs advocate that all of the Appendix A Guidelines must be included in the rules.

⁶ Order No. 07-360 at 38.

⁷ Joint QFs’ Comments at 4.

1 considered whether nameplate capacity must be measured in AC, and therefore it would be
2 inappropriate to include such a requirement in the rules at this time. Instead, the Joint QFs may
3 raise this issue in the upcoming generic docket.

4 **d. OAR 860-029-0020(2)(a): Joint QFs’ Proposal to Delete Contract**
5 **Language Regarding Jurisdiction**

6 The Joint QFs’ written and oral comments take issue with the following language from the
7 existing rules, which remains unchanged in the Proposed Rules:

8 (a) All contracts between a qualifying facility and public utility for energy and
9 capacity shall include language which substantially conforms to the following:

10
11 This agreement is subject to the jurisdiction of those governmental agencies and
12 courts having control over either party to this agreement. . .

13 The Joint QFs propose a new revision to this section of the rules to correct what they
14 believe to be the Commission’s “unlawful” expansion of its personal and subject matter
15 jurisdiction in recent orders.⁸ That is, the Joint QFs ask the Commission to depart from its recent
16 jurisdictional orders by deleting the section of the Commission’s rules that was used to support the
17 Commission’s exercise of personal jurisdiction over QFs’ standard PPAs. Arguing that these
18 orders were wrongly decided, the Joint QFs claim that this rule section should be deleted to prevent
19 further such “unlawful” orders.⁹

20 The Joint Utilities strongly disagree that this rule provision should be removed or revised
21 because (1) the Joint QFs concede that the rule as written accurately reflects the Commission’s
22 orders, and this is not the appropriate proceeding for substantive challenges to Commission
23 precedent; (2) the Joint QFs mischaracterize the Commissions’ orders, which looked to the
24 language implementing subsection 0020 only with respect to *personal*—not subject matter—

⁸ Joint QFs’ Comments at 6 (referring to Order Nos. 18-025 and 18-174).

⁹ Joint QFs’ Comments at 4.

1 jurisdiction; and (3) the Joint QFs’ substantive legal contention has been clearly and repeatedly
2 rejected by both the Commission and the courts.

3 First, the Joint QFs’ request is outside the established scope of this proceeding—to update
4 the Commission’s rules, consistent with recent Commission orders. The Joint QFs acknowledge
5 that the Commission’s orders in Docket Nos. UM 1894 and UM 1931 “expressly relied upon the
6 language from OAR 860-029-0020(2)(a) . . . as the basis to find personal jurisdiction.”¹⁰ The
7 Commission’s reference to and reliance on this language suggests that the current rule continues
8 to accurately reflect the Commission’s policy and legal conclusions. The Joint QFs’ disagreement
9 with the Commission’s orders is not relevant to the question of whether the Proposed Rule
10 accurately reflects current Commission precedent.

11 Second, the Joint QFs mischaracterize the Commission’s orders referencing subsection
12 0020 by stating that “the language from OAR 860-029-0020(2)(a)” formed “the basis to find
13 personal jurisdiction *and subject matter jurisdiction* over a contract dispute filed by a utility against
14 a QF.”¹¹ The Joint QFs’ statement conflates the Commission’s analyses of personal and subject
15 matter jurisdiction. In Order No. 18-025, the Commission carefully pointed out that the PPA
16 language, included pursuant to OAR 860-029-0020(2)(a), was relevant only to “personal
17 jurisdiction,”¹² and that “subject matter jurisdiction—*unlike personal jurisdiction*—cannot be
18 conferred . . . by consent or estoppel.”¹³ Indeed, Order No. 18-025 addressed the language
19 corresponding to subsection 0020 under the specific heading of “Personal Jurisdiction.”¹⁴ The
20 Commission then cited Order No. 18-025 in its subsequent jurisdictional discussion in Order
21 No. 18-174, which found separate “bases” for exercising jurisdiction “over the parties and the

¹⁰ Joint QFs’ Comments at 7.

¹¹ Joint QFs’ Comments at 7 (emphasis added).

¹² *Portland General Electric Co. v. Pacific Northwest Solar, LLC*, Docket No. UM 1894, Order No. 18-025 at 5 (Jan. 25, 2018).

¹³ Order No. 18-025 at 5 n.6 (quoting *Aguirre v. Albertson's, Inc.*, 201 Or App 31, 41 (2005)) (Commission’s emphasis).

¹⁴ Order No. 18-025 at 4-5.

1 subject matter” in the dispute.¹⁵ Thus, the Commission did not rely on the language implementing
2 subsection 0020 to reach any decision regarding *subject matter* jurisdiction, and to the extent that
3 the Joint QFs object to this subsection on the premise that it was used to support the Commission’s
4 exercise of *subject matter* jurisdiction, this argument is based on a misreading of the Commission’s
5 orders. The language implementing subsection 0020 is relevant only to personal jurisdiction.

6 Third, the Joint QFs’ substantive argument as to personal jurisdiction is simply incorrect,
7 as explained by both this Commission and the courts. It is indisputable that a party *can* voluntarily
8 submit to jurisdiction over the person.¹⁶ Indeed, the United States District Court for the District
9 of Oregon recently confirmed the Commission’s conclusion that a QF can consent to the
10 Commission’s personal jurisdiction by entering into a PPA with a regulated utility:

11 Perhaps most relevant, in this case, is that Plaintiff has consented to the
12 [Commission’s] jurisdiction [because] Plaintiffs’ PPA provides that ‘[t]his
13 Agreement is subject to the jurisdiction of those governmental agencies having
14 control over either Party or this Agreement.’ Thus, even if Plaintiff QFs were to
15 object to the PUC’s ‘control over’ themselves, because there is no question that the
16 PUC ‘has control over’ [the utility], Plaintiffs have consented to both the personal
17 and subject matter jurisdiction of the PUC for disputes arising from their executed
18 PPA with [the utility].¹⁷

19 The Joint QFs offer no explanation as to why *personal* jurisdiction—as opposed to subject matter
20 jurisdiction, which is not implicated by subsection 0200—may not be conferred by consent.

21 In sum, subsection 0020, which directs utilities to include a provision specifically
22 conferring personal jurisdiction over the parties to a standard PPA, is not “controversial” or
23 “uncertain” merely because the Joint QFs disagree with the Commission’s conclusions. Moreover,
24 removing the rule would represent a substantive change outside the scope of this proceeding.

¹⁵ *Portland General Electric Co. v. Alfalfa Solar I LLC, et al*, Docket No. UM 1931, Order No. 18-174 at 3-4 (May 23, 2018).

¹⁶ *Aguirre*, 201 Or App at 41.

¹⁷ *Alfalfa Solar I LLC v. Portland Gen. Elec. Co.*, Case No. 3:18-cv-40-SI, 2018 U.S. Dist. LEXIS 92771 at *22 (May 31, 2018) (“Resolution of this case necessarily requires interpretation of a PPA term that was approved by the PUC, and there is little question that PURPA, FERC regulations and Oregon regulations subject utilities, and their contractual relationships with QFs, to a comprehensive regulatory scheme overseen by the PUC.”)

1 **e. OAR 860-029-0040(6), 0043(2) & 0085(2): Requirement to Offer**
2 **Renewable Avoided Cost Rates**

3 The Joint Utilities’ Initial Comments expressed the understanding that the Proposed Rules
4 are simply intended to codify the Commission’s intent when it adopted a renewable avoided cost
5 requirement in Order No. 11-505,¹⁸ and that Idaho Power currently is not required to offer
6 renewable avoided cost rates. Staff’s statements at the hearing confirmed that the Proposed Rules
7 regarding renewable avoided cost rates are not intended to change the status quo. With this
8 understanding, the Joint Utilities continue to support the Proposed Rules regarding renewable
9 avoided cost rates and to recommend that the rules use consistent language, as detailed in our
10 Initial Comments.

11 **f. OAR 860-029-0043(4): Joint QFs’ Request for Clarity Regarding the**
12 **Requirement to File Standard Avoided Cost Rates that Differentiate**
13 **Between Resource Types**

14 This Proposed Rules reads:

15 Each public utility will file standard avoided cost rates that differentiate between
16 qualifying facilities of different resource types by taking into account the
17 contribution to meeting the utility’s peak capacity of the different resource types.

18 The Joint QFs do not propose to remove or change this Proposed Rule, and they do not assert that
19 it is counter to current Commission policy. Instead, they request “additional clarity” and ask the
20 Commission to “confirm that this rule language is not meant to require a specific rate be established
21 for each type of facility.”¹⁹

22 The Joint Utilities agree that the Proposed Rule is not intended and should not be
23 interpreted to *require* utilities to establish an avoided cost rate for each resource type. When the
24 Commission modified the standard avoided cost calculation methodology in Order No. 14-058 “to
25 adjust for capacity contribution of each resource type,” it indicated that the adjustment must use

¹⁸ *In the Matter of Investigation into Determination of Resource Sufficiency*, Docket No. UM 1396, Order No. 11-505 at 4 (Dec. 13, 2011).

¹⁹ Joint QFs’ Comments at 9.

1 inputs from an acknowledged Integrated Resource Plan (IRP).²⁰ However, the utilities' IRPs
2 currently do not include inputs for all possible resource types. Instead, consistent with existing
3 practice and Commission policy, a QF of a resource type that does not have an established rate is
4 offered the avoided cost rate most consistent with its characteristics.

5 However, the Joint Utilities believe that any clarification of this Proposed Rule must also
6 make clear that current Commission policy permits utilities to offer a standard avoided cost rate
7 specific to any type of resource for which the capacity contribution is known and based on inputs
8 from an acknowledged IRP, consistent with Order No. 14-058.²¹ In that Order, the Commission
9 did not include any limitation as to the resource types that could be accounted for.²² In sum, the
10 Joint Utilities do not oppose the request for clarification, provided that it does not place restrictions
11 on the ability to offer separate avoided cost rates that are not supported by Commission precedent.

12 **g. OAR 860-029-0080(7)(b): Waiver of an Avoided Cost Update Requirement**
13 **that Occurs Within 60 Days of an Avoided Cost Update**

14 Staff's August 21, 2018 comments propose two alternatives for a new subsection (b) for
15 this Proposed Rule relating to waiver of a requirement to file an avoided cost update in situations
16 where two avoided cost updates would otherwise be required under the rules within 60 days of
17 each other:

18 Alternative 1: (b) In the event a utility's integrated resource plan is acknowledged
19 within 60 days of May 1 in a particular year, the Commission may direct the utility
20 to waive its 30-day post-IRP update.

21
22 Alternative 2: (b) In the event a utility's integrated resource plan is acknowledged
23 within 60 days of May 1 in a particular year, the Commission may waive the
24 requirement the utility file an annual update on May 1.²³

²⁰ *In the Matter of Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 2 (Feb. 24, 2014).

²¹ Order No. 14-058 at 15.

²² Order No. 14-058 at 15.

²³ The Joint Utilities note that this alternative appears to be missing a word between "requirement" and "the utility file."

1 The Joint Utilities supported Alternative 2 in their Initial Comments. However, upon further
2 review, the Joint Utilities recommend that neither alternative be incorporated into the rules. The
3 Commission already has authority to waive any of the rules in Division 29,²⁴ and a separate
4 provision permitting waiver of an avoided cost update filing is unnecessary. If the Commission
5 decides to add a new subsection (b), the Joint Utilities support Alternative 2 over Alternative 1,
6 for the reasons explained in our Initial Comments, and with the understanding that the “complete
7 avoided cost update following” IRP acknowledgment encompasses all of the factors included in a
8 May 1 update filing.²⁵ In other words, this rule does not allow for a waiver of either the IRP or
9 the May 1 *update*, but instead allows for a waiver of the separate filing requirement. Substantively,
10 both updates would be made, but as part of a single filing instead of as two separate filings.

11 **h. OAR 860-029-0085(5): Effective Date for Avoided Cost Updates Reflecting**
12 **a Significant Change and Joint QFs’ Request to Add Burden of Proof**

13 As an initial matter, the Joint Utilities note that the Joint QFs’ comments incorrectly
14 indicate that the Joint Utilities propose to strike language from OAR 860-029-0080, the existing
15 rule regarding the requirement to file electric system cost data.²⁶ In fact, the Joint Utilities do not
16 take issue with the language of the existing rule and instead commented on OAR 860-029-0085,
17 the new Proposed Rule regarding the requirement to file standard avoided cost rates.²⁷

18 Proposed Rule OAR 860-029-0085(5)(c) provides that an update to avoided cost rates
19 stemming from a significant change in circumstances “will become effective 90 days after
20 filing.”²⁸ Staff recommends in its August 21, 2018 comments that this provision be removed in
21 its entirety, acknowledging that there is no clear Commission precedent supporting its adoption.
22 As explained in our Initial Comments, the Joint Utilities agree that neither the existing rules nor

²⁴ OAR 860-029-0005(4) (“Upon request or its own motion, the Commission may waive any of the Division 029 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.”).

²⁵ Order No. 14-058 at 25.

²⁶ Joint QFs’ Comments at 10-11.

²⁷ Joint Utilities’ Initial Comments at 4-5.

²⁸ Docket No. AR 593, Staff Report for July 17, 2018 Public Meeting.

1 Order No. 14-058 dictates an exact, 90-day timeline for effectiveness of an avoided cost rate update
2 reflecting a significant change.²⁹

3 The Joint Utilities’ Initial Comments proposed a compromise of adding “within” so that
4 the provision reads:

5 Updates to avoided cost rates under this rule are subject to review and approval by
6 the Commission and will become effective **within** 90 days after filing.

7 However, the Joint QFs argue that the Proposed Rule should remain unchanged, citing QFs’ need
8 “for more certainty with respect to avoided cost price updates.”³⁰ The Joint Utilities continue to
9 believe that our proposed revision would provide more certainty for QFs than simply removing
10 any timeline from the rules, as Staff proposes.

11 In addition to their comments regarding the effective date, the Joint QFs also request that
12 this Proposed Rule be revised to reflect the Commission’s statement in Order No. 14-058 that,
13 “[W]e caution stakeholders that the ‘significant change’ required to warrant an out-of-cycle update
14 will be very high. We expect the parties to use this option infrequently.”³¹ The Joint Utilities
15 agree with Staff’s position articulated at the hearing that this type of qualitative statement does not
16 belong in the rules.³² The Commission’s order simply stated its expectation and offered guidance
17 about how it will view such updates, and the Commission can apply this guidance to any request
18 for such an update without incorporating the language in the rule.

19 **i. OAR 860-029-0100: Joint QFs’ Proposal to Remove Rule Regarding**
20 **Alternative Dispute Resolution Process**

21 The Joint QFs question whether the current alternative dispute resolution process is
22 valuable and suggest that the Commission “consider whether this process is still relevant and

²⁹ The Joint Utilities noted that the existing rule addresses avoided cost data, not rates, OAR 860-029-0080(7), and that Order No. 14-058 did not indicate that the Commission intended to make avoided cost rates resulting from a significant change effective exactly 90 days after filing. Order No. 14-058 at 26.

³⁰ Joint QFs’ Comments at 10.

³¹ Order No. 14-058 at 26.

³² The Joint QFs’ examples from other Proposed Rules regarding *who* has the burden of proof are not analogous to the language they propose to add to the rules regarding *how* the Commission will evaluate an update, and these examples do not provide support for the Joint QFs’ proposal.

1 worthwhile or whether improvements are needed.”³³ The Joint Utilities agree that the dispute
2 resolution process should be reviewed and potentially revised but do not support undertaking any
3 changes to the process in this proceeding—particularly at this point in the rulemaking process.
4 This issue is more appropriately addressed in the upcoming generic docket.

5 **j. OAR 860-029-0120(4): Clarification Regarding Timing of Scheduled**
6 **Commercial On-line Date for Existing Qualifying Facilities**

7 This Proposed Rule, with the minor edits reflected in Staff’s August 21, 2018 comments,
8 reads:

9 (4) The power purchase agreement must specify that a qualifying facility may select
10 a scheduled commercial on-line date consistent with the following:

11 (a) Anytime within three years from the date of agreement execution;

12 (b) Anytime later than three years after the date of agreement execution if the
13 qualifying facility establishes to the utility that a later scheduled commercial
14 on-line date is reasonable and necessary and the utility agrees.
15
16

17 The Joint Utilities seek clarification that this Proposed Rule applies only to new, not existing, QFs.
18 The Joint Utilities ask for this clarification because whether an existing QF should be entitled to
19 select a commercial on-line date up to three years from the date of contract execution does not
20 appear to be a settled issue.

21 The Joint Utilities recognize that this specific issue has not yet been raised by parties in
22 this rulemaking proceeding and that there may be concerns regarding the timing of this request for
23 clarification. However, it is important to the Joint Utilities that the rules reflect unambiguous
24 Commission policy and precedent. In seeking this clarification, the Joint Utilities do not intend to
25 suggest a substantive policy change and understand that policy issues will be addressed in future
26 proceedings. These comments are intended to ensure that the rules accurately reflect the
27 Commission’s existing decisions.

³³ Joint QFs’ Comments at 19.

1 This Proposed Rule’s language originates from the Commission’s approval of a stipulation
2 in Order No. 15-130 where the parties agreed to allow a QF the option to select a commercial on-
3 line date within three years from the date of execution of the PPA.³⁴ It appears that part of the
4 rationale in agreeing on this three-year timeframe was to balance the need to protect customers by
5 limiting the ability of a QF to enter into speculative contracts against a QF’s need to obtain
6 financing to build its project.³⁵

7 After the Commission adopted the Stipulation in Order No. 15-130, parties questioned the
8 applicability of this provision to existing QFs, but the Commission never resolved this question.
9 For example, in reply briefing in UM 1610 Phase II, PacifiCorp argued that it would be more
10 appropriate to establish a one-year time frame between PPA execution and energy delivery because
11 “the Company’s experience has shown that a one year planning horizon provides the QF with
12 certainty on the avoided costs, plenty of time to complete a new QF PPA, and adequate time to
13 complete any modifications to the QF’s interconnection.”³⁶ The Renewable Energy Coalition
14 (REC) disagreed with PacifiCorp on this issue, stating that it did not need to be resolved because
15 it was raised too late in the process, and that it understood that the three-year window applied to
16 both new and existing QFs.³⁷

17 In Order No. 16-174, the Commission summarized the parties’ position on this issue, but
18 did not resolve the question of whether this language would apply to existing QFs.³⁸ For this
19 reason, the Joint Utilities believe that this is an unsettled issue that requires clarification in this
20 rulemaking to ensure that the rules are not broader than what has been actually decided by the
21 Commission.

³⁴ Docket No. UM 1610, Order No. 15-130, Stipulation at 2 (Feb. 20, 2015).

³⁵ Docket No. UM 1610, Brief in Support of Stipulation at 2-3 (Feb. 26, 2015).

³⁶ Docket No. UM 1610, PAC/1600, Griswold/4 (Aug. 7, 2015).

³⁷ Docket No. UM 1610, REC’s Prehearing Brief at 22 (Sept. 2, 2015); Docket No. UM 1610, REC’s Post-Hearing Brief at 9-10 (Oct. 13, 2015).

³⁸ Order No. 16-174 at 25-27 (May 13, 2016).

1 The Joint Utilities acknowledge that a uniform determination regarding the appropriate
2 timeframe between execution of the PPA and energy delivery for an existing QF may be a policy
3 issue that should be addressed in future proceedings. However, based on the existing precedent,
4 it is not clear that the Commission intended for this three-year window to apply to both new and
5 existing QFs.³⁹ For this reason, the Joint Utilities simply ask for clarification from the Commission
6 that this Proposed Rule only applies to new QFs.

7 **k. OAR 860-029-0130(3): Scheduled Commercial On-line Date Requirements**
8 **for Nonstandard Power Purchase Agreements**

9 The Proposed Rules do not address the requirements for scheduled commercial on-line date
10 for nonstandard PPAs, but QF representatives raised this issue in a workshop, and Staff’s August
11 21, 2018 comments recommend including an analog to proposed OAR 860-029-0120(4), discussed
12 above, in the Proposed Rules regarding nonstandard PPAs. As explained in our Initial Comments,
13 the Joint Utilities oppose inclusion of such a requirement in OAR 860-0029-0130, because it is
14 not supported by Commission precedent⁴⁰ and would represent a new, substantive policy.
15 However, if the Commission determines that this new policy should be included in the rules, then
16 the Joint Utilities request that it be applied only to new QFs, consistent with the request related to
17 OAR 860-029-0120(4), as discussed above.

18 **l. Joint QFs’ Proposal to Incorporate Additional Guidelines from Order No.**
19 **07-360 Appendix A into Rules**

20 The Joint QFs advocate for including all of the guidelines in Appendix A to Order No. 07-
21 360 (the Appendix A guidelines) in the Proposed Rules.⁴¹ Appendix A, entitled “Adopted
22 Guidelines for Negotiation of Power Purchase Agreements for QFs 10 MW or Larger,” resulted

³⁹ Although the Joint Utilities understand that existing QFs may require time between the execution of the PPA and the commencement of energy deliveries, it certainly does not seem reasonable that these QFs would require as much time as yet-to-be built projects who first need to obtain financing. Moreover, the Joint Utilities question whether an existing QF that is already operational can even have a scheduled commercial on-line date.

⁴⁰ See Order No. 15-130 at 2 (addressing *standard* PPAs).

⁴¹ Joint QFs’ Comments at 15-18.

1 from the generic proceedings in Docket No. UM 1129 that concluded in 2007.⁴² The Joint Utilities
2 oppose the Joint QFs' proposal, as explained in depth in our Initial Comments, and support Staff's
3 decisions regarding which guidelines to include, as reflected in Staff's August 21, 2018 comments.
4 The Joint Utilities strongly oppose including the guidelines regarding nonstandard avoided cost
5 calculations in the Commission's PURPA rules, because they were never intended to be generally
6 applicable rules and may have been superseded by subsequent Commission orders.

7 **II. Conclusion**

8 The Joint Utilities respectfully request that the Commission adopt the Proposed Rules, with
9 the modifications addressed in these comments and in our Initial Comments.

Respectfully submitted this 5th day of September, 2018.



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⁴² Order No. 07-360 App'x A.