Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 ● FAX (503) 241-8160 ● tcp@dvclaw.com
Suite 450
1750 SW Harbor Way
Portland, OR 97201

March 29, 2019

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into PURPA Implementation.
Docket No. UM 2000

Dear Filing Center:

Pursuant to the Oregon Public Utility Commission ("Commission") Staff's March 14, 2019, Request for Comment in the above-referenced docket, the Alliance of Western Energy Consumers ("AWEC") respectfully submits these responses to Staff's questions. AWEC responds to a limited number of questions below, but reserves its right to take a position on other issues raised by Staff in later stages of this proceeding.

15. How should storage be treated under PURPA implementation? Please discuss treatment for stand-alone storage, storage collocated with non-renewable generation, and storage collocated with renewable generation. Provide the applicable avoided cost pricing approaches for the listed possibilities.

AWEC questions whether stand-alone storage facilities would be able to meet the fuel use criteria under PURPA, which requires that 75 percent or more of a Qualifying Facility's ("QF") total energy input must be from "biomass, waste, renewable resources, or any combination thereof…."[1/] A stand-alone facility for which the source of power is unknown will not be able to demonstrate compliance with this requirement. If such a facility is unable to demonstrate that its total power inputs observe this limit, it cannot be certified as a QF under PURPA. Further, the Federal Energy Regulatory Commission ("FERC") has affirmed that PURPA's fuel use limitations apply equally to energy storage facilities and small power production facilities.[2/] For the same reason – an inability to meet PURPA's fuel use requirement

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1/ 18 CFR § 292.204(b)

2/ Luz Development and Finance Corp., 51 F.E.R.C ¶ 61,078, 61,170 (1990) (1990 WL 317079 at **4).

– AWEC believes a storage facility co-located with non-renewable generation is also not eligible for QF status.

With respect to storage facilities co-located with renewable generation, AWEC questions whether energy storage may be independently certified as QFs, as such facilities do not "produce" power, but merely store it. It is true that, nearly three decades ago, in Luz Development and Finance Corp., FERC indicated that PURPA "contemplate[d] electric energy storage systems as renewable resource small power production facilities."[3/] Some state commissions, however, have raised questions in recent years about energy storage's QF eligibility. In 2017, for instance, the Idaho Public Utilities Commission stated that it was "unaware of any reference in PURPA or FERC's implementing regulations that identifies battery storage as a renewable resource eligible for QF status."[4/] This statement should be seen as dicta, coming in the context of an Idaho Power request for a declaratory ruling that assumed for purposes of the petition that energy storage systems were PURPA-eligible. The Idaho Commission, therefore, did not specifically rule on this issue, but it did caution that its ruling on the disputed issues that assumed energy storage systems were PURPA-eligible "should not be read to presume that this Commission deems battery storage to be a legitimate qualifying facility eligible for the benefits of PURPA …."[5/]

Consequently, recent decisions may call into question whether battery energy storage, co-located with a renewable facility or not, can qualify as a QF. However, FERC, not the OPUC or other state-level commissions, is ultimately responsible for ruling on a storage facility's QF status and, therefore, the Commission should assume that storage co-located with a renewable resource is QF-eligible, but be aware of potential uncertainty surrounding the eligibility of energy storage for QF status.

If battery storage co-located with renewable energy is QF-eligible, then the avoided cost pricing may be fact-specific. Is the co-located renewable resource a QF itself? If so, avoided cost pricing should avoid double-payment for the same energy – that produced by the renewable resource and then held by the storage facility. Is the co-located renewable resource owned by the same entity that owns the storage facility? Separate ownership may complicate avoided cost pricing. AWEC will review the responses of other parties on this issue.

21. Given recent utility practice of acquiring resources on an economic basis, outside of need, should the Commission change the current practice of using IRP resource acquisition to define resource sufficiency/deficiency (thereby defining payments for capacity)?

Yes.

3/ Luz Development and Finance Corp., 51 FERC at P. 61,171.

4/ Re the Petition of Idaho Power Co. for Declaratory Order, Case No. IPC-E-17-01, Order No. 33785 at 10-11, 2017 WL 3007822 at *10 (July 13, 2017).

5/ Id.

a. If yes, how should the Commission determine eligibility and pricing for capacity payments?

Capacity payments for any resource, whether renewable or non-renewable, should be based on the date the utility is projected to be capacity-deficient. For renewable avoided costs (assuming renewable pricing is maintained), the resource deficiency date should be established based on the date the utility is projected to need additional resources to meet RPS compliance. However, if that date is earlier than the date the utility is projected to be capacity deficient, payments should be reduced in proportion to the capacity contribution of the resource. AWEC notes that treatment for QFs and resources procured though a utility-led RFP should be treated similarly in this regard. However, treatment of non-QF resources is outside of the scope of this docket.

22. When in the process of contracting should a legally enforceable obligation (LEO) be obtained?

AWEC recommends that the Commission follow established FERC precedent on this issue by making clear that a LEO is created at the time the QF makes a binding commitment to sell its output to the utility.[6/] Such a binding commitment may precede an executed contract, as FERC has made clear that the important factor is that the commitment is binding on the QF. In most cases, however, AWEC expects that the LEO would occur upon execution of the QF contract.

AWEC appreciates the opportunity to provide these comments and looks forward to participating further in this investigation.

Sincerely,

/s/ Tyler C. Pepple

Tyler C. Pepple
Davison Van Cleve, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97201
Telephone: (503) 241-7242
Facsimile: (503) 241-8160
E-Mail: tcp@dvclaw.com
Of Attorneys for the Alliance of Western Energy Consumers

6/ See, e.g., Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 (2011); FLS Energy, Inc., 157 FERC ¶ 61,211 (2016).