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VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

**Re: Docket UM 2000: In the Matter of Public Utility Commission of Oregon,
Investigation into PURPA Implementation.**

Dear Filing Center:

Attached for filing in the above-captioned docket is a copy of the Joint Utilities' Comments on the Commissioner Workshop.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2000

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation into PURPA Implementation

JOINT UTILITIES'
COMMENTS ON WORKSHOP

I. INTRODUCTION

In accordance with Staff's May 21, 2019, email, Portland General Electric Company (PGE), PacifiCorp d/b/a Pacific Power (PacifiCorp), and Idaho Power Company (Idaho Power) (together, the Joint Utilities) submit these comments regarding issues raised at the Commissioner workshop held on June 11, 2019. The Joint Utilities appreciate the opportunity to file these comments and the ongoing efforts of Staff and the Public Utility Commission of Oregon (Commission) to develop a process for the investigation into Oregon's implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA). In particular, the Joint Utilities appreciate Staff's revised recommendations, circulated on June 19, 2019, which respond to concerns raised in initial comments and at the workshop.

The Joint Utilities continue to support the recommendations set forth in their Comments on Staff's Draft White Paper filed on June 7, 2019. Most notably, the Joint Utilities continue to believe that a single contested case process is the most efficient, straightforward, and fair process for undertaking a holistic review of the Commission's PURPA policies. Although administration of a single docket would undoubtedly present challenges, the Joint Utilities believe that it will be less cumbersome than examining different aspects of PURPA in potentially up to nine concurrent

dockets.¹ Consolidation would prove more efficient; eliminate the risk of parties filing the same or substantially similar comments, evidence, and/or briefing in multiple proceedings; and reduce the risk of inconsistent findings across multiple dockets. And finally, use of the contested case process would ensure that the Commission has a robust and comprehensive record in that docket on which to base all of its decisions.

Nonetheless, based on comments made at the June 11, 2019, workshop, the Joint Utilities recognize that the Commissioners may prefer to separate issues into several dockets, some of which may be decided on a faster track, without an evidentiary record developed in a full contested case. Given this feedback, the Joint Utilities provide the following recommendations, which respond to Commissioner direction while accommodating the Joint Utilities' concerns over fast-tracking some issues through rulemaking.

First, the Joint Utilities recommend that all dockets should run in parallel to ensure that overlapping and interdependent issues are timely identified, and that the resolution of important longer-term issues is not delayed. Most significantly, the Joint Utilities urge the Commission not to delay consideration of the most important issue—the methodology for avoided cost pricing—pending the outcome of other investigations. As Staff correctly observed in its Draft White Paper, current avoided cost methodologies are not capturing market realities,² and the longer QFs are able to lock in pricing based on non-market-based rates, the greater the potential customer harm. Moreover, the processes for all of the dockets must be flexible enough to allow consolidation when necessary for efficiency and to ensure consistent outcomes.

¹ Staff identified six potential dockets in its Draft White Paper and identified three more at the workshop that will have a bearing on the outcome of docket UM 2000 (*i.e.*, Docket UM 2011, Docket UM 1893, and the resource value of solar proceedings).

² Draft White Paper at 19.

Second, if the Commission elects to use a rulemaking process for some issues, and if material factual disputes arise in the rulemaking process, then the Commission should resolve such disputes based on an evidentiary record in a contested case. At this time, it is difficult to predict all of the factual disputes that may arise because parties have not presented their substantive proposals.

Third, the Commission should fast-track issues only if near-term resolution provides significant value. Such an approach ensures that Commission and stakeholder resources are devoted only to the most valuable near-term issues and that near-term efforts do not delay longer-term investigations into important issues—like the avoided cost methodology.

II. DISCUSSION

A. Parallel proceedings must be flexible to allow consolidation of issues and prevent delay.

As described in Staff's Draft White Paper and acknowledged by several stakeholders at the workshop, the Commission's investigation must be holistic to ensure that any policy changes are considered in the overall context of the Commission's PURPA implementation. If parallel dockets are used, the issues lists must be carefully crafted to ensure that issues are appropriately segregated. At the workshop, stakeholder comments emphasized the overlapping and mutually dependent nature of the issues under consideration—for example, the value of QF capacity. Interrelated issues should be examined in the same proceeding.

The processes also must remain flexible and nimble so that when interrelated, or identical, issues arise in separate dockets, they can be quickly consolidated into a single proceeding. Otherwise, there is a risk that interdependent and overlapping issues will be examined and potentially decided in isolation without understanding how resolution of one issue will impact other issues under consideration in other dockets.

B. The contested case process need not be lengthy and must be used to resolve factual disputes.

The Joint Utilities' primary recommendation is that the Commission continue to use the more robust contested case process to establish its PURPA policies, because contested cases are better suited to address the technically complex and often fact-intensive nature of PURPA issues than rulemakings. And although contested cases provide more robust process, they do not necessarily require a longer schedule. The Joint Utilities believe that a drawn-out, multi-year investigation is not necessary.³

Moreover, the Joint Utilities do not agree with the proposition that the continuing disputes regarding PURPA implementation exist *because* the Commission has used contested case processes in past proceedings. By its nature, PURPA implementation is controversial, and developing an administrative methodology to value avoided costs is inherently difficult—particularly in today's rapidly evolving and ever-changing market. The Joint Utilities do not believe that allowing *less* process will result in better decisions or fewer disagreements in the future.⁴

Based on the feedback at the Commissioner workshop, however, the Joint Utilities recognize that there appears to be a strong desire to use rulemaking to address and resolve certain issues identified in Staff's Draft White Paper. As described in more detail below, the Joint Utilities believe that some issues that are primarily policy questions could be reasonably addressed through rulemaking. But if, in the course of the rulemaking process, it becomes apparent that a Commission decision will require resolution of a factual dispute, then the Joint Utilities

³ Prompt resolution of the avoided cost issues are particularly critical because of the current disconnect between administratively determined avoided cost and market prices.

⁴ Moreover, in both Docket UM 1129 and Docket UM 1610, the Commission deferred elements of its decision-making specifically to allow it to gather additional evidence, which suggests that *more* process at the outset would have aided the Commission in resolving the issues more quickly.

recommend that the fact-dependent issue be removed from the rulemaking and taken up in the contested case.

In addition, rulemaking should include enough process to ensure that the Commission has a sufficient record to decide the disputed issues. At a minimum, this process should allow for a robust informal collaborative process and have adequate time built into the schedule to allow for meaningful stakeholder input before proposed rules are drafted. This informal process should include workshops, and the opportunity to file initial and responsive comments. And once the formal rulemaking process begins with the filing of proposed rules with the Secretary of State, the process should allow adequate time for parties to file comments and/or legal briefs on the proposed rules and to respond to other stakeholder comments sufficiently in advance of the hearing.

C. Identification of issues that can potentially be resolved on an expedited basis.

Based on the foregoing discussion, the Joint Utilities address each of the issues Staff identified for expedited review in a rulemaking process. The items that the Joint Utilities believe can be fast-tracked are those that will provide near-term value even though they may need to be modified based on the outcome of the longer-term contested case investigation.

1. Avoided Costs

As stated in initial comments, the Joint Utilities agree with Staff that developing a template for displaying the inputs and outputs of each utility's avoided cost model likely could occur through an expedited rulemaking proceeding. As discussed at the workshop, adopting a more uniform presentation of each utility's avoided cost pricing should be straightforward and will allow each utility to more easily and frequently update its avoided cost prices, or, at a minimum, to annually update more elements of its avoided cost prices. More comprehensive updates will mitigate the disconnect between administratively determined avoided cost prices and the market

while the Commission works through the longer-term investigation into how to better align avoided cost prices and market realities.

2. Contracting

The Joint Utilities were initially very concerned about Staff's proposal to use a fast-track rulemaking procedure to undertake a holistic examination of both the process for obtaining a standard contract and the substantive terms and conditions included in the standard contract. As Staff and Commissioners noted at the workshop, contract terms are interdependent, and in the Joint Utilities' experience, changing one term often affects many other parts of the contract—requiring a thorough and meticulous review of the entire agreement after each revision.

At the workshop, Staff clarified that its intent was not to expedite its review of contracting, which alleviates the Joint Utilities' primary concern over the proposal as outlined in the Draft White Paper. In light of Staff's clarification that the rulemaking process would unfold in parallel with the longer-term contested case investigation, the Joint Utilities believe that rulemaking could be used to address standard contract processes, terms, and conditions—provided that the process allows sufficient time for a thorough review of the issues and provides procedures that allow significant factual disputes to be shifted into a contested case.

Staff made clear at the workshop that it plans to draft rules that will encompass policy decisions, and once the draft rules are circulated and stakeholders' positions are staked out, it may become apparent that resolution of disputed terms and conditions could require a factual determination that is best resolved in a contested case with a factual record subject to cross-examination. While it is difficult to determine at this stage what disputes may arise, many contract terms present hybrid policy and factual issues. For example, parties may dispute:

- whether nameplate capacity remains the appropriate metric for determining standard-contract eligibility and how a facility's nameplate capacity and net output should be defined and measured to account for new and evolving technologies;

- the type and amount of credit support that is meaningful and commercially standard; or
- whether QFs should be required to make financial commitments when entering contracts to ensure only serious projects proceed, and if so, how much of a commitment is appropriate and necessary.

To ensure that parties receive due process and that the Commission is able to make important policy determinations based on a robust factual record, the Joint Utilities request that any rulemaking on contracting include adequate time and process for identifying materially disputed facts and efficiently moving the resolution of such issues into a contested case.

3. Interconnection

The Joint Utilities believe that several of Staff's proposed interconnection issues could be resolved in the near-term through a rulemaking process, subject to the caveats discussed above.⁵ The one interconnection issue that should not be resolved through rulemaking and most definitely should not be resolved on an expedited basis is the allocation of network upgrade costs and the interconnection service options available to QFs. Therefore, the Joint Utilities support Staff's revised recommendation to address the treatment of network upgrades through a contested case investigation. Depending on stakeholders' proposals, this issue may involve significant legal and jurisdictional issues, and could require a fully developed factual record to the extent any stakeholder relies on disputed factual representations to support a change to Commission policy.

At its heart, the allocation of interconnection-related network upgrade costs requires the Commission to decide whether a QF is responsible for *all* the interconnection costs incurred because of the QF's siting decision, or whether utility customers will bear some portion of the

⁵ See Joint Utilities' Comments on Staff's Draft White Paper at 12-13 (near-term rulemaking may be appropriate for the issues identified).

costs.⁶ Shifting these costs onto customers is not only contrary to PURPA, it would have a potentially dramatic rate impact that undermines the Commission’s steadfast commitment to maintaining customer indifference. This issue is not as straightforward as simply adopting a FERC policy designed for non-QF merchant generators operating in a competitive wholesale market and applying it to QF generators that are not.⁷ The Joint Utilities do not believe that such a far-reaching and potentially significant decision should be made without a full record and therefore support Staff’s revised proposal to consider network upgrades in a contested case investigation in the first instance.

4. Planning

The Joint Utilities do not believe that the planning issues identified by Staff for a separate investigation should be taken up separately. Staff seeks to examine how utilities account for QF capacity in the integrated resource planning process, and Staff’s revised proposal appears to suggest that this investigation occur after the utilities’ 2019 Integrated Resource Plans (IRPs) have been filed and reviewed. The Joint Utilities do not necessarily oppose delaying the planning investigation pending review of the IRPs. However, the Joint Utilities maintain that planning and related issues are best considered in the broader avoided cost investigation—not in a separate investigation.

How the utilities plan for QFs in their IRPs relates to broader questions about how QF capacity is generally valued, including in the calculation of avoided cost pricing, which will be a critical issue in the avoided-cost investigation. Also, at the workshop, stakeholders indicated that

⁶ “Interconnection costs,” as defined by FERC and the Commission, specifically include the “reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility” because of the QF interconnection. 18 C.F.R. § 292.101(b)(7); OAR 860-029-0010(9).

⁷ On pages 5 and 6 of PacifiCorp’s Responses to Stakeholder Questions filed on March 29, 2019, PacifiCorp included a high-level discussion of the important legal considerations supporting the Commission’s current policy. PacifiCorp’s attachments to its response provide additional discussion of this issue and demonstrate the complexity, contentiousness, and importance of this issue.

they intend to raise the issue of compensating existing QFs for capacity immediately upon contract renewal. Investigating the success rate of QFs and the capacity value, or lack thereof, provided by both new and existing QFs is likely to require intensive fact finding. To ensure consistency and efficiency, these issues are best addressed in the avoided cost investigation, alongside related issues.

III. CONCLUSION

The Joint Utilities appreciate the opportunity to file these comments. While the Joint Utilities continue to believe a full contested case that includes all issues is the best path forward, these comments outline potential issues that can be reasonably carved out for separate examination, potentially on an expedited basis. As the Commission crafts its issues list and opens its investigation(s), the Joint Utilities recommend that all dockets proceed in parallel to prevent delay, that all disputed factual matters be resolved on the basis of an evidentiary record, and that issues are fast-tracked only if they provide near-term value that outweighs the potential inefficiency of deciding an issue in the near-term that will be the subject of the longer-term investigation.

Respectfully submitted this 9th day of July 2019, on behalf of Joint Utilities.



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