BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2000

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into PURPA Implementation.	COMMENTS OF THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION, THE RENEWABLE ENERGY COALITION, AND THE COMMUNITY RENEWABLE ENERGY ASSOCIATION IN RESPONSE TO OPUC WORKSHOP

I. INTRODUCTION

The Northwest and Intermountain Power Producers Coalition ("NIPPC"), the Renewable Energy Coalition ("REC"), and the Community Renewable Energy Association ("CREA") (jointly, "QF Trade Associations") respectfully submit these comments in response to the Oregon Public Utility Commission ("Commission" or "OPUC") workshop held on June 11, 2019. The QF Trade Associations appreciate the thoughtful conversation at the OPUC workshop and offer the following recommendations.

The Commission should undertake this Public Utility Regulatory Policy Act ("PURPA") implementation effort in light of the entire complement of its statutory directives, including promoting a diverse array of energy sources; increasing the marketability of qualifying facility ("QF") power; creating a settled and uniform institutional climate; and ensuring that utilities cannot prevent QFs from selling power to utilities. The Commission's actions should also consider and recognize the direct and indirect benefits of PURPA to the market and ratepayers. PURPA creates competitive

options for generation resources by stimulating investment in development assets in Oregon and creating an environment for other market participants to exist and participate in utility RFPs. This critical creation of incentive to invest in development of Oregon's renewable resources ultimately drives rates down for retail customers.

The following table summarizes the QF Trade Associations' recommended scope for this effort:

Issue Category	**Issues Addressed**	**Action Taken - Timeframe**	
		Short-Term	*Long-Term*
Interconnection	IEEE 1547 update; publishing QF interconnection standards; rules for 10-20 MW projects; process and dispute resolution; enforceable timelines; study content requirements; third-party consultant specifics; data issues not addressed in UM 2001; process to challenge technical requirements/seek lower cost alternatives; treatment of Network Upgrades; requirement for QFs to take Network Resource Interconnection Service; allocation of costs among generators.	Rulemaking, commenced immediately and completed by year-end 2019	
	Lack of progress in interconnection queues		Investigation and/or Rulemaking
Avoided Cost	Minimum filing requirements; standardized template; factors to be considered in annual updates; rules and enforcement mechanism for out-of-cycle updates; avoided cost update process and legally enforceable obligation process	Rulemaking	
	Methodology		Investigation and/or Rulemaking

Contracts[1]	Standardized contract terms that are most pressing and easily resolvable in the near term; standardized process for negotiating standard contracts	Rulemaking	
	Standardized contract terms that require Commission resolution of legitimate disputes over law or policy before drafting specific contractual language; non-standard contracts		Investigation and/or Rulemaking
Planning	Treatment of new and existing QF capacity in utility IRPs; consistent treatment of QF capacity in avoided cost calculations	Investigation and Rulemaking	
Dispute Resolution	Formalized procedures for dispute resolution	Administrative Hearings Division rulemaking	

The above list of priorities reflects and appropriately incorporates two key principles for any PURPA investigation: 1) PURPA benefits ratepayers and the wholesale market of renewable generation by, among other effects, increasing competitive options, highlighting the utility's costs for generation, and creating competitive pressure on the utilities; and 2) investor-owned utilities have a significant incentive to suppress any competition with their incumbent monopoly status and have vast legal and regulatory resources that allow them to achieve their objectives by outspending their opponents in lengthy proceedings before the Commission or by simply delaying policy changes.

[1] The heading "Contacts" may be better relabeled to include the concept that this category also includes significant policy considerations to ensure parties are not precluded from raising legitimate policy issues in this phase of the proceedings.

In light of these concerns, the QF Trade Associations largely support Staff's procedural approach in the White Paper and encourage the Commission to be mindful during the process of the other ongoing regulatory matters in which stakeholders must concurrently participate. The proposal to utilize rulemaking processes to the extent possible appropriately recognizes that a full-blown evidentiary hearing on the entire universe of PURPA issues is not the most effective way to obtain stakeholder input or the most efficient way to resolve the critical issues. The QF Trade Associations stress that many stakeholders with significant knowledge of the renewable development industry are not necessarily full-time participants in regulatory proceedings and instead spend substantial time engaged in the renewable industry itself. This point is particularly the case with QFs, which are often small-scale developers, including renewable development companies with very few employees, irrigation districts, and other industry participants without full-time regulatory employees. At the same time, the matters at issue before the Commission are of major importance and consequence to such industry participants, and the Commission's decisions cannot be fully informed without participation by such industry participants. The process and scheduling of events should therefore take the resources and competing pressures on the stakeholders into account.

II. COMMENTS

A. Near-Term Issues Should be Resolved in a Rulemaking

Neither rulemakings nor contested case proceedings are inherently superior, and while the QF Trade Associations have historically supported using the Commission's contested case process rather than rulemakings to address PURPA matters, the QF Trade Associations now recommend that UM 2000 rely more upon the rulemaking process

where possible. Contested case proceedings have many beneficial elements, including sometimes allowing for a greater opportunity to develop issues (with an opportunity to conduct discovery, submit multiple rounds of testimony, cross examine witnesses, and multiple rounds of briefing). However, as explained below, the QF Trade Associations believe that those advantages have historically been almost entirely one sided in favor of the utilities as they can use their ratepayer funded resources to convince the Commission to adopt policies that harm their competition (QFs), which then necessarily harms their ratepayers.

An appropriately structured rulemaking can be superior to a contested case process when it involves the Commission's quasi-legislative function and the adoption of policies that will have general applicability. Per Oregon's mini-PURPA statute, the "terms and conditions for the purchase of energy or energy and capacity from a qualifying facility *shall . . . [b]e established by rule*."[2] A "rule" is "any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency."[3] The rulemaking process generally involves public notice of draft rules, public participation and comment, filing of new rules with Legislative Counsel, and eventual adoption and public posting of rules.[4] And "a rule is not valid unless adopted in substantial compliance with the provisions of [ORS 183.335]."[5]

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2 ORS 758.535(2).
3 ORS 183.310(9).
4 *See* ORS 183.335.
5 ORS 183.335(11).

In this proceeding, the Commission seeks to make changes to its generally applicable PURPA policies. Therefore, a rulemaking is the appropriate process, and is the only process that will result in valid and enforceable rules.

The utilities' concerns about using a rulemaking proceeding are unfounded. The utilities expressed concerns that a rulemaking will not allow for adequate development of evidence, that peeling off interrelated issues into separate proceedings will result in conflicting outcomes, and that only consensus items should be resolved in the fast-track phase of the investigation.

First, as just discussed, a rulemaking has a special process whereby the Commission can set generally applicable policy, in the same way as a legislature. Evidence gathering is not always essential for this process, but the Commission can (and should) engage in an informal process prior to initiating the formal rulemaking.[6] The Commission can also set its own deadlines and initiate smaller "spin-off" investigations to engage in more in-depth information gathering should that become necessary.

Second, by parsing out issues into smaller separate proceedings, the stakeholders will be able to focus on those issues, without the distraction of every other aspect of PURPA implementation.

Third, issues should proceed in the fast-track process even in the absence of consensus because the most controversial issues are the ones that, if resolved quickly, have the highest likelihood to reduce disputes. The utilities want to have a major, wide-

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6 ORS 183.333 ("The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule.").

ranging contested case that requires major expense to litigate even with respect to small issues that are not worthy of a contested case.

The Commission's contested case process has generally proven to be lengthy, expensive, subject to discovery disputes, and overly complex. The Commission's three prior PURPA investigations were essentially one long PURPA investigation that has lasted about fifteen years, with individual proceedings that lasted nearly five years (UM 1129 from January 2004 to November 2008), about four years (UM 1396 from December 2008 to 2012 when the issues essentially merged into UM 1610), and about seven years (UM 1610 from June 2012 to Present).

In these large dockets, important issues can literally get lost and left unresolved. There are numerous examples of issues being lost in the prior PURPA investigations.[7] In addition to exhausting parties' resources without resolution, the consequence of having an issue go unresolved can be significant after the investigation ends. Such unresolved issues can easily become the source of disputes between individual QFs and a utility in a PURPA transaction or can become the impetus for opening a subsequent generic PURPA investigation. In either event, the unresolved issue is likely to lead to extensive litigation

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[7] For example, in Phase One of UM 1610, QFs argued for longer contract lengths up to 20 years with fixed prices and utilities argued for shorter contract lengths, but the Commission's Phase One Order No. 14-058 did not address the issues at all – apparently leaving PacifiCorp and Idaho Power free to force QFs to litigate the issue again just a few years later in UM 1725 and UM 1734 respectively. Similarly, in Phase One of UM 1610, issue IC was whether existing QFs should be paid for capacity value during the sufficiency period when renewing a long-term contract, as the Idaho Public Utilities Commission had recently determined existing QFs should. But Order No. 14-058 did not discuss the issue at all.

or further process, as well as protracted uncertainty in the market that is likely to prevent investment in the development of Oregon's renewable resources.

Contested cases also often get bogged down in discovery disputes that defeat the purpose of developing an evidentiary record. It can be difficult for QFs and the QF Trade Associations to discover utility information, and it can also be difficult to expedite a proceeding when appropriate.[8] Discovery has limited value when the utilities are not compelled to provide information, which further emboldens them to provide less and less

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[8] *See e.g., In re Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Ruling (Oct. 27, 2016) (ALJ Kirkpatrick denying in part and granting in part REC's motion to compel); *In re PacifiCorp Investigation into Schedule 37 – Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less*, Docket No. UM 1794, Ruling (Nov. 2, 2016), *aff'd by* OPUC Order No. 17-121 (Mar. 23, 2017) (ALJ Arlow denying in part and granting in part CREA's motion to compel); *In re PacifiCorp Investigation into Schedule 37 – Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less*, Docket No. UM 1794, Ruling (Nov. 18, 2016), *aff'd by* OPUC Order No. 17-121 (Mar. 23, 2017) (ALJ Arlow denying REC's motion to compel); *Blue Marmot V LLC et. al. v. PGE*, Docket Nos. UM 1829-1833, Ruling (Oct. 30, 2017) (ALJ Kirkpatrick denying QFs' motion to compel); *Blue Marmot V LLC et. al. v. PGE*, Docket Nos. UM 1829-1833, Ruling (Dec. 13, 2017) (ALJ Arlow granting utility motion to compel in part); *In Re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar Qualifying Facilities*, Docket No. UM 1854, Ruling (Jul. 20, 2017) (ALJ Grant limiting discovery to ten requests); *Bottlenose Solar, LLC et. al. v. PGE*, Docket Nos. UM 1877-1882, 1884-1886, 1888-1890, Prehearing Conference Report (Feb. 13, 2018) (ALJ Arlow suspending current schedule including resolution of QFs' pending motion to compel and directing parties to address utility's pending motion for summary judgment); *Bottlenose Solar, LLC et. al. v. PGE*, Docket Nos. UM 1877-1882, 1884-1886, 1888-1890, Ruling (Oct. 23, 2018) (ALJ Arlow allowing utility to respond to notice of voluntary dismissal); *PGE* v. *Alfalfa Solar, LLC et. al.*, Docket No. UM 1931, Ruling (Aug. 23, 2018) (ALJ Arlow granting utility's request to continue discovery and denying QFs' motion for summary judgment, expedited schedule, and oral argument); *Sandy River Solar, LLC v. PGE*, Docket No. UM 1967, Ruling (Feb. 5, 2019) (QF's motion to compel denied in part and granted in part, allowing QF to rephrase and re-ask questions).

information. Further, there is no reason that the utilities cannot provide information and responses to discovery requests in non-contested cases, including rulemakings. The advantages of the contested case process (i.e., greater access to information) are one sided and illusory, unless the Commission decides to change its de facto policies of requiring QFs to extend a considerable share of their resources on discovery fights and ultimately allowing utilities near complete discretion to provide as much or as little information as they want in contested cases anyway.

Then, even at the conclusion of a broad PURPA investigation, further process is necessary in order to make the Commission's conclusions about its generally applicable policies a part of its official rules.[9] Therefore, because the Commission seeks a quick resolution of policy issues that will be broadly applicable, it should do so through one or more rulemakings tailored to resolve the specific issues at hand. We look forward to working with the Commission and Staff to structure the process in a manner that efficiently achieves the objectives of the investigation.

B. Interconnection is the Most Pressing Issue with the Greatest Potential to Reduce Disputes and Provide Immediate Ratepayer Benefits

Interconnection issues have a pressing need to be resolved on an expedited basis because of abusive and likely discriminatory behavior by utilities, as well as implications for the Community Solar Program of the current delays in the interconnection queues. The Commission already has Small Generator Interconnection Rules and Large Generator Interconnection Guidelines that will serve as a baseline for improvement on an

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[9] *See In re Petition to Amend OAR 860-029-0040, Relating to Small Qualifying Facilities*, Docket No. AR 593.

expedited basis. With a few narrowly tailored revisions to these existing policies, the Commission can offer substantial clarity to the industry and reduce disputes. For example, the Commission can avoid disputes by establishing more enforceable timelines,[10] requiring utilities to act reasonably,[11] providing specifics regarding when a QF can hire a third-party consultant,[12] providing a process for disputing interconnection requirements, and reviewing possible lower cost alternatives.[13] The Commission can also make some very minor changes to update its reference to the IEEE 1547 standard used for interconnections, to require that the utilities post their interconnection standards, and to determine which rules apply to the 10-20 MW sized projects. Since 2009 when the AR 521 rules were adopted, there are now a modest number of existing projects that have been operating safely for decades, but which also have renewing contracts and interconnection agreements. The Commission should consider whether these projects need to have their interconnections completely refurbished, which could result in some projects unnecessarily shutting down.

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10 *See e.g., PNW Solar, LLC and Butler Solar, LLC v. PGE*, Docket Nos. UM 1902-1907 Complaints at First Claim for Relief (QF claim that utility failed to meet all applicable deadlines).

11 *See e.g. Sandy River, LLC v. PGE*, Docket No. UN 1967, Order No. 19-218 at 1 (June 24, 2019) (concluding that OAR 860-082-0060(8)(f) does not require the utility to reasonably exercise its discretion to agree to hire a third-party consultant to complete interconnection facilities and system upgrades because it is not expressly stated in that OAR subsection.).

12 *See e.g., Id.*

13 *See e.g., Dunn Rd. Solar, LLC v. PGE*, Docket No. UM 1963, Complaint at Second Claim for Relief (QF Claim that utility required payment for facilities and system upgrades not necessary for its interconnection).

As discussed at the Commission workshop, these rules and issues also have significant implications for the Community Solar Program and may reduce the number of eligible bidders in the competitive bidding process. Community Solar projects are required to be PURPA QFs and interconnect under the same rules. Staff has recently concluded that "interconnection costs may prevent the successful launch of the [Community Solar Program]" and that "interconnecting as a QF could further increase interconnection costs."[14] Therefore, Staff recommends having a fair and functional process in place by the end of 2019 that addresses key interconnection barriers including the assignment of system upgrade costs to generators, the requirement for generators to take Network Resource Interconnection Service ("NRIS"), the allocation of costs among generators, the lack of information and control over costs, and the delays in processing applications.[15] Therefore, if the Commission desires to have a fair and functional interconnection process in place for QFs, including Community Solar projects, before the end of the year, then the interconnection issues need to take precedence.

The utilities' concern that the Network Upgrades issue is susceptible to factual disputes and therefore needs to be vetted first in a contested case is unfounded. The Commission made its original interconnection rules in AR 521, a rulemaking, and FERC's Network Upgrade Policy was itself developed in a rulemaking.[16] FERC Order

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14 *In Re Community Solar Implementation,* Docket No. UM 1930, Staff Draft Proposal for Community Solar Interconnection at 1 (June 19, 2019).

15 *Id.* at 4-11.

16 Order No. 2003, 104 FERC ¶ 61,103 at P 14 ("The [Advanced Notice of Proposed Rulemaking] initiated a consensus-making process in which members of various segments of the electric power industry, government, and the public had an

No. 888 had also previously found that ordering new industry-wide rules to eliminate discriminatory transmission practices through a notice-and-comment rulemaking was appropriate, and the courts affirmed that procedure over utility objections.[17]

Similar to the arguments the utilities now make here, Puget Sound Energy argued that FERC could not adopt its open-access transmission rules through a rulemaking without first making a finding of discrimination through hearings. The D.C. Circuit rejected that argument. The court cited prior precedent related to the analogous open access regime under the Natural Gas Act, explaining that FERC "was not required to make specific findings that individual rates charged by individual pipelines were unlawful, or to offer empirical proof for all the propositions upon which its order depended, before promulgating a generic rule to eliminate undue discrimination."[18] Even where factual disputes may exist, the court explained "while the Commission cannot rely solely on unsupported or abstract allegations, the agency is also not required to make specific findings, so long as the agency's factual determinations are reasonable."[19]

The D.C. Circuit therefore also affirmed FERC's finding through notice-and-comment rulemaking that "'Network Upgrades, which are defined as all facilities and equipment constructed *at or beyond* the Point of Interconnection for the purpose of

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opportunity to provide input. This effort resulted in two documents that largely shaped the Notice of Proposed Rulemaking (Large Generator Interconnection NOPR) that followed.").

17 *Id.* at P 19 (citing *New York v. FERC*, 535 U.S. 1 (2002).).

18 *Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667, 688 (D.C. Cir. 2000).

19 *Id.* (internal quotation omitted).

accommodating the new Generating Facility,' are (ultimately) the responsibility of the Transmission Provider."[20] Among other findings, those findings included:

> [T]he Commission remains concerned that, when the Transmission Provider is not independent and has an interest in frustrating rival generators, the implementation of participant funding, including the 'but for' pricing approach [for interconnection network upgrades], creates opportunities for undue discrimination . . . [A] number of aspects of the 'but for' approach are subjective, and a Transmission Provider that is not an independent entity has the ability and incentive to exploit this subjectivity to its own advantage. For example, such a Transmission Provider has an incentive to find that a disproportionate share of the costs of expansions needed to serve its own customers is attributable to competing Interconnection Customers. The Commission would find *any policy that creates opportunities for such discriminatory behavior to be unacceptable*.[21]

Thus, the same factual conclusion the utilities seek to expend the Commission's and the QFs' resources litigating in a protracted contested case – namely, the unremarkable proposition that investor-owned utilities have the inherent incentive to overestimate the need for and cost of Network Upgrades for their competitors in the generation market – has already been conclusively established over a decade and a half ago by the federal agency with expertise in the subject. And the federal courts have affirmed that unremarkable finding in the context of a rulemaking over utility objections that there needed to be an evidentiary hearing on the subject.

There is no basis whatsoever for a different conclusion under Oregon law – *especially* where Oregon law specifically directs the Commission to set the terms and

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20 *Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 1284 (D.C. Cir. 2007) (quoting Order No. 2003, 104 FERC ¶ 61,103, at P 676) (emph. in Nat'l Ass'n of Regulatory Util. Comm'rs).

21 Order No. 2003, 104 FERC ¶ 61,103, at P 696 (emphasis added).

conditions of purchases from QFs *by rulemaking*. In sum, because interconnection is a pressing issue in Oregon's energy industry, with impacts on both QFs and Community Solar projects, the Commission should address it immediately in the short term and through a rulemaking.

Finally, in the process of addressing the interconnection issues, Staff and the Commission should consider historical interconnection practices and behaviors. In UM 2001, the QF Trade Associations recommended that the utilities provide five to seven years of historical interconnection studies and historical interconnection metrics (timelines and costs) for the same amount of time in order to inform this docket.[22] The Commission adopted Staff's recommendation in that docket to not require this data at that time, noting that "[t]he [UM 2001] effort is complementary, not foundational, to the broad PURPA investigation in Docket No. UM 2000."[23] Staff noted at the June 11, 2019 public meeting that those interconnection data would be more appropriately addressed in UM 2000. There is no reason that the Commission cannot direct the utilities to provide that information in a rulemaking proceeding. Therefore, in this docket, the Commission and Staff should review that and additional data in order to understand the historical compliance patterns and opportunities for improvement.

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22 *In re Investigation Into Interim PURPA Action*, Docket No. UM 2001, Joint Comments of NIPPC, REC and CREA on Draft Interim Interconnection Data Proposal, at 6-8, 14-18, Attachment A and B (May 31, 2019).

23 *In re Investigation Into Interim PURPA Action*, Docket No. UM 2001, Order No. 19-217, at Appendix A at 7 (Jun. 21, 2019).

C. The Avoided Cost Methodology Should be Examined in the Longer Term After Clarity and Transparency is Achieved

The industry desperately needs greater transparency into and uniformity in avoided cost price calculations in Oregon. As noted at the Commission workshop, avoided costs are the heart of PURPA implementation, and for years the public has had no meaningful opportunity to correct biased assumptions and errors unilaterally developed by the utilities in their integrated resource plans ("IRPs") before such erroneous assumptions are used to calculate avoided costs. The short-term scope of this effort should include a rulemaking to set the minimum filing requirements and a standardized avoided cost template so that all interested parties can be on a level playing field when it comes to reviewing and analyzing avoided cost updates. The Commission should also create transparency as to how contracted and uncontracted QFs are treated in the calculation of avoided cost rates.

The near-term phase should also establish stricter rules around and enforcement mechanisms for out-of-cycle updates, and it should create more certainty and predictability around the avoided cost update process and the process to form a legally enforceable obligation. The recent Commission action in UM 2001 has renewed the QF Trade Associations' concerns surrounding these issues. The unexpected and out-of-cycle update to the avoided costs undermined confidence in the Commission's policies for such rate changes and destabilized the QF development market. The problem is exacerbated by the lack of transparent evidence supporting the rate adjustments that occurred in UM 2001. At a time when the costs of generation development and construction is likely increasing due to tariffs on the major inputs to such facilities, the Commission summarily

accepted the utilities' assertions that the avoided costs should decrease. These types of actions deter investment in renewable development in Oregon.

As noted at the workshop, the QF Trade Associations would also be willing to include as part of the near-term docket the question regarding whether to include more variables in the annual updates if the Commission is concerned that the current annual updates are not allowing for correct price signals. However, any such policy must also comply with the spirit of the statutory directive to "[c]reate a settled and uniform institutional climate for the qualifying facilities in Oregon."[24] The QF Trade Associations could only support such changes in policy of rate updates if the variables and inputs that are updated annually are derived from sources that are transparent, publicly available for inspection before the update, and predictable in advance by interested parties – *not*, for example, a utilities' unilaterally created capital cost update such as those recently relied upon in the UM 2001 rate updates.

The Commission should wait to address the avoided cost methodology until there is better transparency and processes in the near-term, and after the resolution of other dockets affecting avoided cost calculations. The methodology is not ripe for resolution, and the Commission should avoid opening too many near-term proceedings so as to not stretch Staff's and the stakeholder's resources too thinly across the various proceedings. The avoided cost methodology will be informed by the Commission's UM 2011 capacity investigation docket and should, at the very minimum, be delayed until after completion of that proceeding.

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[24] ORS 758.515(3)(b).

D. Standardized Contract Terms and Refined Procedures Have the Potential to Reduce Disputes in the Near Term

As discussed above, QF contract terms and conditions shall be established by rule, and by adopting standardized terms and contracting procedures the Commission can reduce ambiguity and potential differences in implementation by utilities. Such issues have been the source of numerous complaints before the Commission and therefore resolving these issues in the near-term will help reduce litigation. The entire purpose of a standard contract is to remove market barriers to developers and owners of small QFs and to prevent delays and disputes that occur where each contract is subject to individual negotiation with a reluctant utility purchaser of QF power. Along those lines, to be of any value, the standard contract must be simple enough for small QF developers to understand while containing the commercial reasonableness to support third-party financing of development and construction of QFs. While the QF Trade Associations largely support Staff's approach, the process should be broken up so that the most pressing issues are resolved first and in an expedient manner.

Without getting into all of the specifics, there are some issues that could be resolved on an even more expedited basis because they are more pressing and more easily resolvable, and other issues for which it may be helpful for the Commission to resolve policy disputes before implementing specific contract language. For example, the treatment of storage QFs is a pressing issue in the renewable energy field that should be addressed in the near term to avoid losing the opportunity to develop such resources during the lengthier investigation. Storage may be used with QFs; FERC precedent is

clear on this point.[25] While storage presents some novel rate-setting issues in the context of avoided costs, there should be no legitimate impediment to adopting rules in the near term that will facilitate development of storage QFs. The Commission should adopt this general approach and leave it to the ALJ to adopt a schedule that resolves the most pressing issues first and then resolves the contracting policies for the remainder of the issues prior to developing the exact contract language to implement such policies.

In addition to or regardless of whether the Commission adopts standardized contract terms, the Commission should standardize the process by which changes are requested to the terms of the standard contracts. If the Commission chooses to adopt standardized contract terms by rule, then it may decide that changes to those standard contract terms can also only be made by amending that rule. However, under any scenario where the utilities are permitted to have standard-offer contracts with terms that are not mandated by rule, the Commission needs to develop a uniform process for changing the wording of those rules. This process could be similar to the process that is in place for changes to the avoided cost schedules, or something different.

Late in 2018, PGE filed its request to change the terms of its standard power purchase agreements in Docket No. UM 1987 and requested expedited relief. The revisions were so significant that a simple redline could not be prepared for comparison to the existing document. PGE completely rewrote the agreement from the ground up, and the resulting document proposed by PGE was almost twice as long as the existing standard contract by word count. That, combined with the fact that no established process

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[25] *Luz Dev. And Fin. Corp.*, 51 FERC ¶ 61,078 at p. 61,172 (1990) .

exists to review these types of changes, made it difficult for stakeholders to know how such changes should be handled. By establishing such a process, with guiderails on the timing and extent of such revisions, the Commission can offer guidance to Staff and help create a settled and uniform institutional climate. As such, the Commission should not only consider standardizing the contract terms but also standardizing the process for proposing changes to those terms as part of its near-term actions in this effort.

E. Issues Related to Planning Should Be Resolved in a Short-Term Investigation

The primary goal related to planning is to review the utilities' treatment of QF capacity in their IRPs for both new and existing QFs and to ensure consistency between that treatment and the utilities' avoided cost filings. It is essential that this issue be addressed in the near term because it is long overdue.[26] The Commission has a current list of IRP Guidelines adopted in an IRP investigative proceeding,[27] and Staff in this docket recommends a separate near-term investigation to address this issue. That procedure is appropriate; however, to the extent any changes are necessary to incorporate changed terms and conditions for PURPA contracts, the QF Trade Associations support making those changes via a rulemaking.

The QF Trade Associations, however, may disagree with Staff about how this information should be used. The QF Trade Associations understand Staff may only desire to investigate and create uniformity around the utilities' planning assumptions for

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26 *See* Supplemental Comments of NIPPC, REC, and CREA Following First Workshop at 2-4 (Apr. 26, 2019).

27 *In re Investigation into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002 (corrected by Order No. 07-047).

valuing the capacity of new and existing QFs; however, the planning assumptions adopted should also flow into the avoided cost calculation. For example, when it is assumed that existing QFs will renew and contribute to the utility's capacity need, the existing QFs should also receive an immediate capacity payment when they renew their PPA. This is consistent with the Commission's findings three years ago in UM 1610, "that a certain amount of capacity may not be valued if utilities assume in their IRPs that existing QFs nearing contract expiration will automatically renew."[28] As such, it is time to not only develop appropriate fact-based planning assumptions, but to also require that the utilities carry those planning assumptions into their avoided cost calculations. This second piece requires more than a simple investigation and should be incorporated into the Commission's rules around avoided cost.

Additionally, the IRP planning issues should encompass development of reasonable protocols for modeling unbuilt QFs in the utilities' IRPs. Such protocols would include a transparent and reasonable expected success rate for QFs under contract but not yet constructed. Relatedly, the planning issues should examine how to ensure that solar QFs' contribution to a utility's capacity needs is not undervalued in the avoided cost rates, which the QF Trade Associations believe is currently the case for PGE.

F. Dispute Resolution Procedures Should be Updated in the Near-Term

It is appropriate to address the Commission's dispute resolution procedures in the near term. As it currently stands, QFs are often deterred from obtaining resolution of

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28 *In re Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 19 (May 13, 2016).

disputes due to the fear that the Commission may only resolve such disputes through full-blown litigation of a complaint, even where that may not be necessary relative to the economic magnitude of the dispute or the simplicity of the issue in dispute. There should be additional options. Therefore, the QF Trade Associations support Staff's recommendation on this topic.

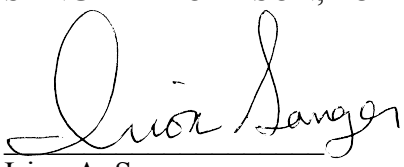
III. CONCLUSION

The QF Trade Associations appreciate Staff's hard work on this and the Commission's thoughtful discussion at the recent Commission workshop, as well as the opportunity to participate directly with Commissioners in the workshop format. Following that Workshop, the QF Trade Associations offer the above revisions to Staff's list of near-term PURPA issues to address in the first phase of UM 2000.

Dated this 9th day of July 2019.

Respectfully submitted,

SANGER THOMPSON, PC



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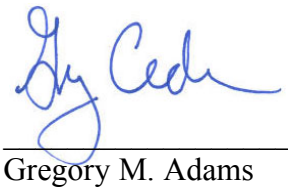

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