

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 ON
STAFF’S DRAFT WHITE PAPER

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 to Staff’s proposed scope for this proceeding as detailed in the UM 2000 Draft White Paper provided on May 28, 2019 (the “Draft White Paper”). The QF Trade Associations appreciate the opportunity to provide these comments and Staff’s efforts in reviewing all the parties’ comments and compiling this Draft White Paper. With a few exceptions noted below, Staff’s recommendation of issues to be resolved in the near-term (on a “fast-track”) appropriately prioritizes issues with a high potential to reduce disputes, issues that are ripe for resolution, and issues that will inform the longer-term process.

QF Trade Associations do not, at this time, respond to Staff’s broader list of issues to be resolved in the longer-term of this docket but simply emphasize that those issues should be left broad and be more narrowly defined only after the resolution of the

fast-track items. Both the identification of the near-term issues and the substantive discussions over the course of the resolving the near-term issues are likely to inform the issues that will need to be resolved over the longer term.

II. COMMENTS

The QF Trade Associations' comments focus on the specific recommended action items, and not Staff's overall summary of Oregon's past and current PURPA policies. While we do not agree with all aspects of Staff's summary, Staff attempted to provide a comprehensive and balanced perspective and analysis. The QF Trade Associations, however, do not agree that Staff has correctly identified the most important PURPA "design principles." We agree with the specific design principles identified by Staff, but they exclude critical principles and, by the exclusion of key principles, portray a pro-utility and anti-QF bias. Staff identifies the following three principles:

- Promote development of a diverse array of sustainable energy resources;
- Ensure that utilities pay just and reasonable prices, maintaining a customer indifference standard; and
- Create a regulatory process that provides efficiency, clarity, and engenders confidence from all stakeholders.

The QF Trade Associations propose that the PURPA "design principles" start with both federal and Oregon law. Any Commission principles should start with the enabling statutes which provide the Commission's mission and goals with respect to these laws, and the Commission will continue to fail to properly implement PURPA if it continues to ignore the law's cornerstones.

PURPA was passed with the primary goal being to “encourage the development of cogeneration and small power production facilities.”¹ Because “traditional electricity utilities were reluctant to purchase power from, and to sell power to, the nontraditional facilities,” it was necessary for PURPA to require such purchases.² However, to balance this goal against the potential high cost of nontraditional facilities, PURPA provided that the purchase price should be set at “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.”³ Thus, to reflect that utilities continue to be reluctant to purchase power from qualifying facilities, the following additional principle should be added:

- Ensure that utilities cannot prevent, impede or undermine qualifying facilities from selling power to the utility and purchasing power from the utility.

Oregon’s own mini-PURPA also includes specific direction to Oregon’s administrative agencies, this Commission being the most important in terms of PURPA’s implementation. Oregon’s statutorily identified PURPA goals and policies are to:

- Promote the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible;
- Ensure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest;
- Increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon’s citizens; and

¹ *FERC v. Mississippi*, 456 U.S. 742, 750 (1982).

² *Id.*

³ 18 C.F.R. § 292.101(b)(6).

- Create a settled and uniform institutional climate for the qualifying facilities in Oregon.⁴

The QF Trade Associations continue to be dismayed that this Commission and its Staff keep ignoring these basic legal principles in terms of its PURPA implementation. Staff's three PURPA principles accurately capture the first two Oregon goals and policies listed above, but omit (as the Commission's orders frequently omit) the last two, which are increasing the marketability of QFs for the benefit of all Oregon's citizens and creating a settled and uniform institutional climate for QF development. When creating PURPA principles, the Commission does not have the discretion to pick and choose which of the federal and state legislative directions that it wants to follow, but should simply copy and paste those already identified by the legislature.

Further, Staff and the Commission should be careful not to portray the PURPA equation as having the development community on one side and utilities and ratepayers on the other side. Such a portrayal reveals an implicit bias that PURPA is bad for ratepayers and that somehow the utility's interests are aligned with ratepayers. First, PURPA has been the direct cause of immeasurable savings for ratepayers because it created and remains the primary driver for wholesale competition and puts downward pressure on the price for energy. Second, the utility's interests are vastly different from that of the ratepayer (hence why the utility is regulated), and when the utilities cry "but ratepayers" what the Commission should hear is "but shareholders." Therefore, the Commission should not simply adopt policies to hold customers "indifferent" to QF

⁴ ORS 758.515.

development, but should also consider and balance the other responsibilities the federal and state legislatures have tasked the Commission with implementing, including recognizing that utilities are reluctant to purchase QF power, that increasing the marketability of QF power benefits Oregon citizens (including ratepayers), and that the industry is in desperate need of a settled and uniform institutional climate.

A. Avoided Costs

Staff's recommendation to develop a standardized template for avoided cost modeling inputs and outputs is appropriate for resolution in the near-term. This is very similar to what Staff, REC and CREA recommended in UM 1610 when the Commission rejected the proposal to adopt minimum filing requirements. Staff's proposal appears to go beyond the minimum filing requirements by requiring some standardization. This is the basic foundation that will help make the inputs and outputs sufficiently clear to enable Staff and stakeholders a meaningful opportunity to review and estimate avoided costs.⁵ However, without the ability to review, challenge, vet and obtain timely Commission decisions on avoided cost inputs and assumptions, then a standardized template will not be sufficiently meaningful.

One core issue with avoided cost pricing is the lack of consistency between utilities. First, PacifiCorp's prices are too low. This is the core issue with avoided cost pricing and should be addressed in the near-term. PacifiCorp's low prices are due to acquiring resources that are not included in the avoided cost calculation, excluding

⁵ For additional discussion of the QF Trade Associations positions on transparency and standardization of the avoided cost methodology, *see* NIPPC/REC/CREA Responses to Staff's Questions to Stakeholders at 4-12 (Mar. 29, 2019).

transmission from the avoided cost price, failing to pay for capacity, and failing to interconnect projects due to its “load pocket” issue (among others).⁶ PacifiCorp has been permitted by the Oregon Commission (but not other state commissions) to avoid PURPA for too long, resulting in issues for PGE and QFs alike. As such, PacifiCorp’s avoided cost prices should be addressed in the near-term.

Second, the QF Trade Associations recognize that the Commission is legitimately concerned that PGE’s prices became outdated. While stale prices are an issue that should be addressed, the counter-balance to enabling more frequent or more up-to-date avoided cost changes is to provide a settled and uniform climate for updating those prices and with predictable and transparent inputs.⁷ This means that QFs should be able to know when prices will change so that they can complete their negotiation process before any change becomes effective. Staff’s recommendation to develop a standardized template moves this aspect of the avoided cost problem in the right direction.

However, without also taking PacifiCorp’s thumb off the scale and keeping its prices artificially low, there will continue to be a lack of consistency between the utilities. Much of PGE’s QF “problem” was not that its prices were too high or outdated, as those prices were based on PGE’s own costs, but that it was more economic for QFs to transmit

⁶ For additional discussion of the QF Trade Associations positions on PacifiCorp’s low avoided cost prices, see NIPPC/REC/CREA Responses to Staff’s Questions to Stakeholders at 21-22 and NIPPC/REC/CREA Supplemental Comments Following First Workshop at 7-8 (Apr. 26, 2019).

⁷ For additional discussion of the QF Trade Associations positions on avoided cost processes, see NIPPC/REC/CREA Responses to Staff’s Questions to Stakeholders at 9-12.

their power from PacifiCorp’s service territory with one or two wheels. As such, the Commission should address PacifiCorp’s low avoided costs in the near-term.

The Commission should also consider taking up in the near-term the issue of setting a price for carbon-free energy. As PGE’s 2019 Draft Integrated Resource Plan (“IRP”) explains, “[f]uture GHG policies have the potential to dramatically impact resource economics for both emitting and GHG-free resources. PGE has incorporated carbon pricing in IRP analysis...carbon prices have reflected the most relevant GHG policy proposals at the time”⁸ The Oregon Legislature may pass its “cap and invest” bill this legislative session and in such an event, there is likely to be a near-term need for a carbon-free power price. In any event, it is reasonable to assume that carbon regulation will exist during the term of a long-term PURPA contract, and utilities are already, or are likely to, include projections of carbon pricing in their IRPs to justify the cost of major resource acquisitions. QFs supplying carbon-free power to the utility will allow the utility to avoid such carbon regulatory costs. Therefore, to the extent the utilities use carbon pricing to major resource acquisitions, it is necessary to reflect that value in the avoided cost rates at this time. This is an important and timely issue that should be included in the near term in any generic PURPA implementation docket in Oregon because it is not reasonable to assume that Oregon utilities will ignore the value of carbon-free energy in future resource acquisitions.

⁸ PGE’s 2019 Draft IRP at p. 51.

B. Contract Terms and Process

Staff's proposal to develop standard contract procedures and terms that balance the interests of the utility and QFs is also appropriate for resolution in the near-term; however, the extent to which the contract terms will be standardized or reviewed in this near-term process is not clear. By developing standard terms, the Commission can avoid issues where the Commission's policy is interpreted in a slightly different fashion by each utility, resulting in inconsistent treatment of QFs depending on which utility they sell to.⁹ Further, a refined contract negotiation and dispute resolution process would help reduce any utility abuses of the current system, create a more balanced and fair process, and reduce disputes and expedite resolution of disputes.¹⁰ By recommending some standardization of contract terms and the standard contracting process, Staff appropriately prioritizes this issue for resolution.

There are, however, a large number of contract terms that could be drafted more clearly or that should be modified to more appropriately implement PURPA, and if Staff proposes to separate out some for resolution now with others to be resolved later, then the terms to be resolved in the near-term should be clearly detailed from the outset. The stakeholders should be given the opportunity to review and comment on a detailed list of the terms to resolve at this stage.

⁹ For additional discussion of the QF Trade Associations positions on standard terms, *see* NIPPC/REC/CREA Responses to Staff's Questions to Stakeholders at 9-10.

¹⁰ For additional discussion of the QF Trade Associations positions on the contract negotiation process, *see* NIPPC/REC/CREA Responses to Staff's Questions to Stakeholders at 12-14, 19-20 and NIPPC/REC/CREA Supplemental Comments Following First Workshop at 6.

Staff proposes to address “[w]hat would contract timing, term, project size, compensation, security, and renewal encompass?” The QF Trade Associations have no objections to addressing any of those issues now, but it is not clear which terms would be captured in these general categories. For example, it is not clear whether Staff’s near-term list is going to include issues like the contract terms governing scheduling requirements in standard contracts. Because the Draft White Paper does not make it entirely clear which contract terms will be accepted for consideration at this phase and which will be rejected as “phase-two issues,” the list should be made more specific, perhaps even identifying section numbers in the utility standard contracts for consideration. Staff should work with all the stakeholders to develop a list of near-term contract provisions that should be updated.

The remainder of Staff’s recommendations under this category are acceptable and sufficiently clear:

- Establishing the minimum level of information to be provided to obtain a PPA;
- Setting a policy to deal with technology improvement pre- and post-construction;
- Addressing damages provisions;
- Determining the appropriate treatment of storage;¹¹
- Amending the rules to update the standard contracting process; and
- Creating formalized rules related to dispute resolution.

¹¹ For additional discussion of the QF Trade Associations positions on storage, *see* NIPPC/REC/CREA Responses to Staff’s Questions to Stakeholders at 16-18 and NIPPC/REC/CREA Supplemental Comments Following First Workshop at 7.

These near-term actions appropriately prioritize issues with high potential to reduce disputes and issues that are ripe for resolution.

C. Interconnection

Staff's draft list of near-term interconnection issues is also appropriate for resolution in the fast-track including:

- Determining the appropriate level of detail to provide in interconnection studies;
- Reviewing what options a QF has to perform its own studies or upgrades;
- Modifying the current interconnection process, if needed, and developing more enforceable timelines;
- Determining whether independent third parties should be retained to review studies;
- Reviewing data issues not captured by the UM 2001 process;
- Reviewing options for lower cost alternative interconnection technologies;
- Reviewing the level of SCADA data needed and for what size projects;
- Determining which rules to apply to 10-20 MW projects; and
- Conducting a rulemaking to evaluate whether Oregon's treatment of QFs as network resources and treatment of network upgrades is appropriate.

Interconnection is among the highest priority topics for the QF Trade Associations, including the above list of action items.¹² The QF Trade Associations appreciate that Staff has recognized this concern and taken it into account when

¹² For additional discussion of the QF Trade Associations positions on interconnection issues *see* NIPPC/REC/CREA Responses to Staff's Questions to Stakeholders at 14-16 and NIPPC/REC/CREA Supplemental Comments Following First Workshop at 4-6.

developing this near-term action list. These items will provide immediate relief in the industry and have the potential to reduce potential litigation.

Overall, Staff pinpointed most the key issues facing interconnection customers; however, the issue of whether existing projects should be required to construct interconnection upgrades in order to continue operations should also be addressed in the near term. These projects have been operating for many years, installing required upgrades over time, but are then treated as if they are a new project and required to construct new infrastructure in order to continue operating. Many of these projects have contracts expiring soon; therefore, it is important to resolve this issue in the near term.

Finally, the Commission should acknowledge that there are interconnection complaints currently pending before the Commission. These complaints should be resolved expeditiously and before UM 2000, so as to avoid changing the policy in the middle of a complaint proceeding. The projects subject to those complaints have immediate issues that, if not resolved expeditiously, may result in death to those projects. They should not be required to await the outcome of a generic policy docket, but the rights of those interconnection customers need to be protected. They made decisions and investments based on their established expectations and have real deadlines to meet and therefore should not be delayed.

D. Planning

Staff's Draft White Paper also appropriately recommends that issues related to planning and QF contract renewal be addressed in the near term. The QF Trade Associations discussed in-depth the issue regarding the capacity value of renewing QFs both in relation to the IRP planning assumptions and capturing that value in avoided cost

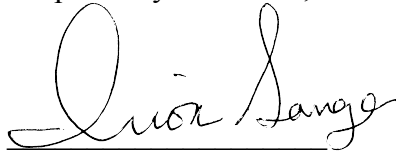
calculations, and this issue is ripe for resolution now.¹³ This issue has been ongoing since UM 1610. Staff listened and is appropriately recommending that this issue be resolved immediately.

III. CONCLUSION

The QF Trade Associations appreciate Staff's hard work and recommend that the Commission adopt Staff's list of near-term PURPA issues to address in the first phase of UM 2000, subject to the revisions discussed above.

Dated this 7th day of June 2019.

Respectfully submitted,

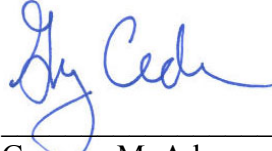


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¹³ For additional discussion of the QF Trade Associations position on the capacity value of renewing QFs *see* NIPPC/REC/CREA Responses to Staff's Questions to Stakeholders at 18-19 and NIPPC/REC/CREA Supplemental Comments Following First Workshop at 2-4.

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