

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 19, 2018

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: June 12, 2018

TO: Public Utility Commission

FROM: Brittany Andrus *ba*

THROUGH: Jason Eisdorfer *E* and JP Batmale *J for JP*

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. AR 593)
Rulemaking Regarding Power Purchases by Public Utilities From Small
Qualifying Facilities.

STAFF RECOMMENDATION:

Update on status of rulemaking for power purchases by public utilities from small
qualifying facilities. Informational filing; no recommendation.

DISCUSSION:

Issue

This report provides an informational update on Docket No. AR 593, the rulemaking
opened for changes to Chapter 860, Division 029, relating to qualifying facilities (QFs).

Applicable Law

Under ORS 756.060, the Commission may adopt reasonable and proper rules relative
to all statutes administered by the Commission.

ORS 758.535(2)(a) specifies that the Commission shall adopt rules to govern the terms
and conditions for the purchase of energy and capacity from a qualifying facility by a
public utility.

Analysis

Background

In November 2015, Obsidian Renewables LLC (Obsidian) petitioned the Commission to adopt revisions to the administrative rules related to power purchases by public utilities from QFs under Public Utility Regulatory Policies Act (PURPA).^{1,2} The Commission declined to adopt the rules proposed by Obsidian in its petition but concluded that a rulemaking was appropriate under ORS 758.535(2)(a) and initiated Docket No. AR 593.³ However, at the same time it opened Docket No. AR 593, the Commission concluded that administrative efficiencies would be realized by waiting to commence the rulemaking process until the conclusion of an ongoing investigation into QF contracting and pricing.⁴

The purpose of this rulemaking is to memorialize Commission policies regarding utility pricing and contracting with QFs. This scope was addressed when the rulemaking was opened in 2016,⁵ and it was reiterated at the January 17, 2018 public meeting at which the Commission adopted Staff's recommendation to move forward with stakeholder engagement activities and to develop draft rules for Commission consideration.⁶

Since opening Docket No. AR 593 in February 2016, the Commission has issued several orders addressing PURPA-related policies. At the Commission's January 17, 2018 Public Meeting, Staff reported that, "the majority of QF contracting and pricing issues that were pending at the time this rulemaking was opened have been resolved. Therefore it is an appropriate time to resume the rulemaking process."⁷ The report also stated, "Staff believes that because a preponderance of the outstanding QF-related issues have been addressed, the time is ripe to begin stakeholder engagement and draft rules for Commission consideration. Staff anticipates that following Commission approval, Staff will develop and distribute a first draft and conduct a workshop to solicit stakeholder input."⁸

¹ Public Utility Regulatory Policies Act of 1978.

² Petition for Rulemaking 1.

³ Docket No. AR 593, Order No. 16-056, February 9, 2016.

⁴ Docket No. UM 1610, Investigation into Qualifying Facility Contracting and Pricing.

⁵ February 9, 2016 public meeting, regular agenda item 3, Staff Report: "Staff does not support Obsidian's request to adopt the rules that it proposed in its petition because they differ from the Commission's currently established policies. Opening a rulemaking to adopt terms and conditions for PURPA power purchases by rule does not require the Commission to substantively revisit its previous decisions adopting terms and conditions that are not already codified in rule," p. 3.

⁶ January 17, 2018 public meeting, agenda item RM3, Commission discussion.

⁷ Staff report for January 17, 2018 public meeting, agenda item RM3, p. 2.

⁸ *Ibid.*

Staff developed the attached draft Division 029 rules, accompanied by a description of the reason for the changes, and a limited number of questions for stakeholders. Staff distributed the document to stakeholders on June 1, 2018, advising stakeholders that Staff planned to publish a Staff Report with the draft rules on June 6, 2018, for the June 19, 2018 public meeting, recommending that the Commission commence the "formal" rulemaking process. Staff requested written comments on the Staff Report and draft rules by June 14, 2018, which would allow for Commission review of Stakeholder comments prior to the June 19, 2018, public meeting. Further, Staff determined that a workshop could occur during the formal phase of the rulemaking rather than during the informal phase because Staff was codifying existing practices.

However, several stakeholders, including (but not necessarily limited to) Renewable Northwest, the Renewable Energy Coalition, the Community Renewable Energy Association, Portland General Electric Company, PacifiCorp, and Idaho Power Company objected to Staff's approach, citing the short time for review, the length of the document, and the inclusion of rule changes that some view as being outside the scope of this rulemaking.

Based on Stakeholder comments, Staff agrees that it is appropriate to allow additional time for stakeholder review of and comment on the draft rules. For this reason, the Staff Report for the June 19, 2018 public meeting is a status report rather than a recommendation to proceed with the formal rulemaking.

Staff intends to recommend proceeding with the formal rulemaking at the July 17, 2018, public meeting. In this case, Staff would expect to receive comments from stakeholders by June 26, 2018, and to post the Staff Report with the draft rules on July 10, 2018.

Conclusion

The Commission opened this rulemaking to update Division 029 to comport with existing orders and policies. This report from staff provides an update on the status of this rulemaking proceeding.

PROPOSED COMMISSION MOTION:

N/A.