

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: October 23, 2018

REGULAR  X  CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

DATE: October 16, 2018

TO: Public Utility Commission

FROM: Anna Kim *ak*  
*E*

THROUGH: Jason Eisdorfer and JP Batmale *JPB*

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. AR 621)  
Request for approval to open a formal rulemaking to adopt Energy  
Efficiency Avoided Cost Reporting Rules.

**STAFF RECOMMENDATION:**

Staff recommends that the Commission approve issuance of a notice of proposed rulemaking on energy efficiency avoided cost reporting requirements.

**DISCUSSION:**

Issue

Whether to approve issuance of a notice of proposed rulemaking on energy efficiency avoided cost reporting requirements.

Applicable Law

Pursuant to ORS 756.070, in performing its duties, the Commission has the right to obtain all necessary information from any public utility. Further, under ORS 756.060, the Commission has the authority to adopt reasonable and proper rules relative to all statutes administered by the Commission.

Analysis

*Background*

In October 2017, the Commission issued an order in UM 1893 opening an investigation into "the process for developing and updating avoided costs used in cost-effectiveness

tests for electric and natural gas energy efficiency, with Staff reporting back to the Commission with a proposed process for future updates.”<sup>1</sup> UM 1893 was designed to:

- Develop a transparent and streamlined avoided cost framework and update process for stakeholders to engage with;
- More easily allow for Staff and stakeholders to propose and explore new avoided cost methodology elements.

The work for the docket was divided into two phases. In Phase 1, Staff engaged utilities and stakeholders in a series of workshops. From these workshops, Staff concluded that energy efficiency avoided costs are used for two distinct purposes:

- Combined short-term energy efficiency acquisition across multiple regions in the state; and
- Long-term integrated resource planning conducted by utilities.

Staff concluded that a rulemaking would be needed in order to develop a regular, streamlined and transparent framework for the updating of energy efficiency avoided costs and to make any refinements to the avoided cost methodology. These new rules would allow for energy efficiency avoided costs updates to occur at regular intervals (e.g., annually), independent of the IRP cycle, and for the utilities to use mutually agreed upon sources of avoided cost data that were not necessarily coming from an acknowledged IRP (e.g., using forward market prices found in a utility’s latest power cost filing). Thus, energy efficiency avoided costs would better reflect actual utility costs. These findings were reported to the Commission in February 2018. The Commission subsequently directed Staff to establish “a regular, on-going process to update and improve avoided costs and open an associated rulemaking to adopt avoided cost reporting rules before December 2018.”<sup>2</sup>

In Phase 2, Staff held two workshops and solicited feedback to improve the methodology and process for updating energy efficiency avoided cost calculations. AR 621 was opened as part of Phase 2 to support the goal of establishing the mechanisms on which a transparent and accessible process for updating and changing avoided costs would be based.

Additionally, the Commission requested a status update every six months. This memo serves as the first six-month status update, as well as Staff’s request to open the formal portion of the energy efficiency avoided cost rulemaking.<sup>3</sup>

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<sup>1</sup> See Order No. 17-394, October 12, 2017, page 1.

<sup>2</sup> See Order No. 18-077, February 27, 2018, page 1.

<sup>3</sup> Ibid.

*Review of Phase 2 Activities*

Since the Commission opened AR 621 (Phase 2), Staff and stakeholders have participated in two workshops with one round of comments.

Workshop #1 – on the possibility of rulemaking

On July 6, 2018, Staff held a workshop to discuss the scope of the rulemaking. Stakeholders expressed openness to the concept of drafting rules to achieve the purpose of UM 1893. Staff reiterated Phase 1 concerns about how reporting requirements would interact with utilities' IRP filing schedules. There was also ongoing interest in how Energy Trust uses the utility avoided cost data in their cost-effectiveness calculations once it is received.

Request for comments based on Workshop #1

Following up on the first workshop, Staff requested comments on the following topics:

- Modify existing rules or draft new rules;
- The source of data submitted;
- Templates; and
- Stakeholder participation.

The majority of Stakeholders preferred drafting rules for a new division rather than adapting existing rules related to avoided costs for this purpose. Also, Stakeholders expressed support for Staff's proposal to lead a regular, annual process, under UM 1893, where all Stakeholders would meet in the spring and agree upon three things by the end of August every year:

- The latest sources of data to be used in the next avoided cost update;
- Any changes to the avoided cost methodology (e.g., changing the formula behind the "Capacity" element of avoided costs); and
- Any updates to the data collection template used to submit updated avoided cost information.

However, consensus was not reached on the data source to be used. Parties deliberated between using the last acknowledged IRP data, the most recently filed IRP data, or the most recent data available. There was also no consensus on where stakeholder participation would come into play; Stakeholders felt that the opportunities and needs for participation would depend on the data source.

After reviewing comments, Staff determined that stakeholders were overall open to rulemaking and that there was enough agreement to expect a successful,

collaborative rulemaking process. Staff developed draft rules and shared them with stakeholders for comment at the next workshop.

#### Workshop #2 – AR 621 proposed draft rules

On August 29, 2018, Staff held a second workshop to solicit comments on the proposed draft rules. Staff walked through each section of the rules. Feedback from this workshop is summarized below in the Stakeholder Comments on Rules section.

After these Phase 2 activities, Staff created a new draft of rules incorporating various comments raised by stakeholders. In response to comments, staff provided a third draft of rules. Staff did not receive any new comments from stakeholders on the final round. Staff did however make some final edits for clarity and conciseness for the draft presented here.

#### *Timeline of Ongoing Phase 2 Activities*

By entering into the formal rulemaking process now, Staff anticipates the formal rulemaking process will end in December 2018. While the formal rulemaking process proceeds, Staff will continue to work with stakeholders to finalize the data submission form as described above. Staff and other stakeholders can test the form and review process on a voluntary basis in December so that Energy Trust can use the data for its next budget cycle. Any necessary adjustments can be applied before energy utilities will be required to use the form for submission the first time on October 15, 2019.

Staff also plans to hold at least one more UM 1893 Workshop in 2018 and several more in 2019. These meetings will be focused on further clarifying how data collected through this process will be used, updating the capacity value used for energy efficiency, and refining the data submission form to be used in October 2019.

#### *Overview of Rules*

The proposed rules require utilities to file avoided cost information annually using a standard form so that the data can be used by the current administrator, Energy Trust of Oregon (Energy Trust), in their next program planning cycle. The proposed rules are organized as follows:

- **Applicability**  
This section specifies that the rules only apply to energy utilities that provide funds to the Commission-appointed non-governmental entity for energy efficiency programs, which is currently the Energy Trust. This section also describes how utilities may request a waiver.

- **Definitions**  
These are the definitions used in this section of rules.
- **Avoided cost data reporting for energy efficiency**  
These rules establish a regular process for submitting data annually to the Commission at a specified time. Utilities will submit data from the most recently acknowledged IRP, general rate cases, and their most recent energy values. Utilities will have an option to submit more up-to-date data, such as data filed in an IRP that has not yet been acknowledged. This option was added to address stakeholder concerns about the gap in time between the last IRP acknowledgement and current market conditions.

Relevant data required for energy efficiency avoided costs will be identified in the reporting form. Based on feedback from stakeholders, and to allow for flexibility over time, Staff opted not to list specific data elements in the rules and specified a time period for adoption of changes to the form itself.

- **Approval of EE Avoided Costs for Energy Efficiency Measures**  
This section outlines the review timeline for data submitted through these rules. Data that comes from an already acknowledged IRP will mainly be checked to verify consistency with data that was already vetted through the IRP process or through a general rate case. Additional consideration would be necessary for data that has not been as thoroughly vetted, such as data that has not yet been acknowledged or, more significantly, data that has not been reviewed by Staff prior to submitting data through this process.

One of the main goals of UM 1893 was to set up a framework through which options for improving energy efficiency avoided cost calculations could be explored with a broad range of interested stakeholders. These rules are the foundation of that framework where the ongoing conversation in UM 1893, can reflect changes in a publically accessible form and format.

Staff will use UM 1893 to support the ongoing evolution of avoided cost calculations and to provide enough information so that stakeholders can understand how avoided costs are calculated and used for energy efficiency cost effectiveness.

#### *Stakeholder Comments on Rules*

Staff asked for feedback at multiple stages during the informal process and incorporated many suggestions into the rules proposed here (attached to this memo). At the first workshop, Staff gathered feedback about the need for rules, followed by an email

request for specific details on content. During August and September 2018, Staff engaged with stakeholders on three drafts of rules, including a workshop on the rules.

There were a few final edits applied to the rules after the last version presented to stakeholders. In working with the administrative hearing division of the OPUC, slight edits were made to the proposed rules for clarity and conciseness. Stakeholders did not receive these final changes prior to the posting of this memo.

Below is a bulleted list of suggested changes and Staff's response/final decision:

- Stakeholders suggested clarification that these rules do not apply to low income programs that also receive public purpose funds. Staff designed these rules such that utilities are required to submit the appropriate data, without requiring entities to use this data. These rules were designed to support Energy Trust's existing methodology, and while the data could potentially be used by other programs such as low income programs, Staff is not requiring this.
- Some stakeholders requested removing references to market transformation and renewables. Staff retained this language because it is consistent with the statutory language in ORS 757.612(1).
- The definition of cost-effectiveness was removed. The term only appeared in the definitions section of the rules as it was removed from another rule in a later draft.
- Stakeholders were deeply engaged in the definition for "energy efficiency measure." Staff considered different options when choosing these definitional references. Although the term "conservation" is considered an archaic reference by energy efficiency professionals, it is used here to be consistent with language in SB 1149. The definition of energy efficiency was also modified to capture the fact that energy efficiency is about efficiency, not merely reduction in use.
- The definitions for "integrated resource plan" and "IRP Update" were removed. These definitions were determined unnecessary.
- Some stakeholders requested less prescriptive rules where a list of avoided cost data requirements is not specified within the rules, but is instead defined within the data collection forms. Staff responded by removing the prescriptive list in the first draft of rules and referring to the template.

- Some stakeholders expressed concerns that there may be a significant gap in time between when the data for the most recently acknowledged IRP was filed and the most up-to-date data available to a utility. Specifically, there was interest in submitting data from IRPs that have not yet been acknowledged. Staff responded by adding an option for submitting data that is more recent than the last acknowledge IRP, and specified that data from a general rate case filing that has been resolved can be used.
- Some stakeholders asked to clarify that an IRP Update may be filed as an update to an un-acknowledged IRP. While it's technically possible for an IRP Update to be filed after an un-acknowledged IRP, this situation is unlikely to arise, and if it does, can be addressed on a case-by-case basis.
- Stakeholders requested clarification on how Energy Trust will use this data and whether or not the rules applied to a nongovernmental agency. The rules were specifically designed to establish the mechanism to provide data to the nongovernmental entity approved by the Commission to administer these programs, which is currently the Energy Trust. The methodology by which Energy Trust will use this data continues to be discussed and evolve as part of UM 1893. Annual submission of data is necessary for Energy Trust to determine the extent to which changes are necessary for their planning purposes.
- Some stakeholders expressed continued interest in integrating guidance in the 2017 National Standard Practice Manual into Energy Trust's cost-effectiveness methodology. Such options can be discussed through the ongoing UM 1893 process.

#### *Request to Move Into Formal Rulemaking*

The rules are ready to move into the formal rulemaking process based on the level of engagement and the nature of feedback provided by stakeholders. The rules reflect much of the feedback that was provided. This next step is important to meet the timeline established by the Commission in its order seeking to have rules in place by December 2018.<sup>4</sup>

#### Conclusion

Staff has worked collaboratively with stakeholders in UM 1893 to develop a new, transparent process for energy efficiency avoided costs. AR 621 was opened to support this process. The rules proposed here enable Staff and stakeholders to

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<sup>4</sup> See Order No. 18-077, February 27, 2018, page 1.

implement the new, regular, transparent process envisioned in UM 1893. Staff believes the rules are ready for adoption and believes that stakeholders are supportive of the rules as currently drafted. Further, by moving AR 621 to the formal portion of the rulemaking process the Commission may be able to promulgate rules before the end of the year, and to impact Energy Trust's next budget generation cycle.

**PROPOSED COMMISSION MOTION:**

Approve issuance of a notice of proposed rulemaking on energy efficiency avoided cost reporting requirements.



## ENERGY EFFICIENCY AVOIDED COSTS FOR USE BY NONGOVERNMENTAL ENTITY

### 860-0XX-0010

#### Applicability of Division 0XX

(1) The rules contained in this division apply only to an energy utility that provides customer funds to a third-party nongovernmental entity approved by the Commission to administer energy efficiency measures and programs, market transformation, or the above-market costs of new renewable energy resources in the utility's service area.

(2) Upon request or its own motion, the Commission may waive any of the Division 0XX rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

### 860-0XX-0020

#### Definitions

For purposes of this division, unless the context requires otherwise:

(1) "Energy Efficiency avoided cost" or "EE avoided cost" means the value to an energy utility of avoiding the use of other resources to provide energy services to its customers through the use of an energy efficiency measure or program.

(2) "Energy efficiency measure" or "energy efficiency program" refers to an energy conservation measure or program that is designed to reduce energy consumption as a result of improved efficiency of energy use.

(3) "Energy utility" means a public utility as defined in ORS 757.005 to which these rules apply.

### OAR 860-0XX-0100

#### Avoided Cost Data Reporting For Energy Efficiency

(1) An energy utility subject to these rules must submit data necessary to calculate its EE avoided costs for energy efficiency measures and programs in the manner and method specified in the Commission-approved reporting form. This form is available at: [https://www.puc.state.or.us/Pages/electric\\_gas/formrpts.aspx](https://www.puc.state.or.us/Pages/electric_gas/formrpts.aspx). The EE avoided cost report must be submitted on or before October 15 of each year for use in the next energy efficiency program budget cycle.

(2) An energy utility must include all data specified in the Commission-approved EE avoided cost report form with:

(a) Relevant data that was used in the energy utility's most recent integrated resource plan or integrated resource plan update that has been acknowledged by the Commission, or was used in the energy utility's most recent general rate case that has been resolved by a final order of the Commission; and

(b) The energy utility's energy values, updated from the energy utility's most recent available data at the time of filing the EE avoided cost report.

(c) Additionally, an energy utility may include more recent data with a supporting explanation as to why the Commission should approve its avoided costs based on such data. The Commission may approve the use of more recent data at its discretion.

(3) At any time, the Commission may update the required data, format and methodology used to report specific values on the Commission-approved EE avoided cost reporting form. Any changes to the form that are approved by the Commission will take effect no less than 60 days following approval.

(4) A gas utility subject to this rule is exempt from to the requirements of OAR 860-030-0007, which requires the filing of a proposed avoided cost methodology and draft avoided costs as part of an integrated resource plan.

#### **OAR 860-0XX-0200**

#### **Approval of EE Avoided Costs for Energy Efficiency Measures**

The third-party nongovernmental entity approved by the Commission to administer energy efficiency measures and programs, market transformation, or the above-market costs of new renewable energy resources in an energy utility's service area may not use utility-specific EE avoided cost data in the administration of such measures and programs until the data is approved by the Commission. The Commission will generally consider approval of EE avoided costs for this purpose within 60 days from the filing deadline for the EE avoided cost report.