BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1734

In the Matter of **PACIFICORP, dba PACIFIC POWER** Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap.	STAFF OPENING BRIEF

I. Introduction

PacifiCorp asks the Commission to modify two of its policies relating to the implementation of the Public Utility Regulatory Act (PURPA) as they apply to PacifiCorp. PacifiCorp asks the Commission to lower the eligibility cap for standard contracts ("Eligibility Cap") for solar and wind qualifying facilities (QFs) to 100 kW and to shorten the term of all PURPA contracts to three years. Staff recommends that the Commission lower the Eligibility Cap for PacifiCorp standard contracts with wind and solar QFs to somewhere between two and four MWs and reject PacifiCorp's request to shorten PURPA contracts to three years.

II. Analysis

A. Staff recommends that the Commission reduce the Eligibility Cap for standard contracts between solar or wind QFs and PacifiCorp.

1. Previous Commission decisions regarding the Eligibility Cap.

Federal Energy Regulatory Commission (FERC) rules implementing PURPA require utilities to offer "standard" avoided cost rates to QFs with a nameplate capacity of 100 kW or less, and allow states to establish a higher Eligibility Cap for standard avoided cost prices.[1] In its initial orders and rules implementing PURPA, the OPUC did not impose an Eligibility Cap for standard rates that differed from the federally-required 100 kW, but did so in 1991.[2]

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[1] 18 C.F.R. § 292.304(c)(1)-(2).
[2] See Order Nos. 81-319, 85-742.

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In 1991, the Commission adopted guidelines for the use of competitive bids to acquire new resources.[3] The Commission noted that QFs could secure a contract with a utility through a competitive bid or under PURPA.[4] The Commission decided that the Eligibility Cap for standard rates should be increased to one MW, stating that "[w]ithout this change, the transaction costs associated with participation in competitive bidding could disadvantage QFs."[5]

In 2005, the Commission increased the Eligibility Cap for standard rates and contracting terms to 10 MW.[6] The Commission noted that it "continue[d] to adhere to the policy, as articulated in Order No. 91-1605, that standard contract rates, terms and conditions are intended to be used as a means to remove transactions costs associated with QF contract negotiation, when such costs act as a market barrier to QF development."[7] The Commission also concluded that "market barriers other than transaction costs also pose obstacles to a QF's negotiation of a power purchase contract[,]" identifying asymmetric information and an unlevel playing field as such barriers.[8]

Finally, the Commission explained that the need to reduce market barriers must be balanced with the Commission's interest in ensuring that a utility pays a QF no more than its avoided costs for the purchase of energy.[9] The Commission noted that standard contracts do not take into account individual QF cost characteristics that result in utility cost savings that differ from the standard avoided cost rates.[10] And, the Commission noted that the risk that future costs may differ from the fixed prices in a PURPA contract is "greater" for a large QF than for a small one.[11]

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[3] Order No. 91-1383 (1991 WL 501921).
[4] *Id.* (1991 WL 501921 at p 10).
[5] *Id.*
[6] Order No. 05-584 at 15 (increasing Eligibility Cap for standard contracts), and 12 (explaining that the term "standard contract" describes[s] a standard set of rates, terms and condition that govern a utility's purchase of electrical power from QFs at avoided cost.").
[7] *Id* at 16.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*

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The Commission selected 10 MW as the Eligibility Cap, noting its reliance on Staff's testimony regarding the extent that market barriers prevented successful negotiation of a contract and Oregon Department of Energy (ODOE) testimony indicating that 10 MW represented a point at which the costs of negotiation become a reasonable fraction of total investment costs.[12] The Commission noted that market barriers exist for QFs with facilities larger than 10 MW, but that it would address these market barriers with improved negotiation parameters and guidelines and greater transparency in the negotiation process.[13]

In 2014, the Commission considered in Phase I of the ongoing Investigation into Qualifying Facility Standard Pricing and Contracting (Docket No. UM 1610) whether the 10 MW Eligibility Cap should be changed.[14] The Commission declined to do so.

2. Staff recommends that the Commission lower the Eligibility Cap for contracts between PacifiCorp and wind and solar QFs to somewhere between two and four MWs.

Staff recommends that the Commission reduce the Eligibility Cap for standard contracts for wind and solar QFs contracting with PacifiCorp. Both solar and wind QF developers have used the Eligibility Cap to obtain standard rates and contracting terms for large QFs by disaggregating their projects into multiple projects at or just under the Eligibility Cap. For example, within a one week period in June 2015, one developer executed standard contracts with PacifiCorp for seven 10 MW solar facilities and one 8 MW solar facility.[15] Another developer executed five standard contracts for 36.5 MW of solar on the same day in May 2015, and executed another two contracts for 19.9 MW one month later.[16] And, three other developers have each executed multiple standard contracts within the last 18 months for multiple facilities that are each below the10 MW cap.[17]

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[12] *Id.* at 17.
[13] *Id.*
[14] Order No. 14-058 at 5-8.
[15] Staff/100, Andrus17.
[16] Staff/100, Andrus17.
[17] Staff/100, Andrus/18.

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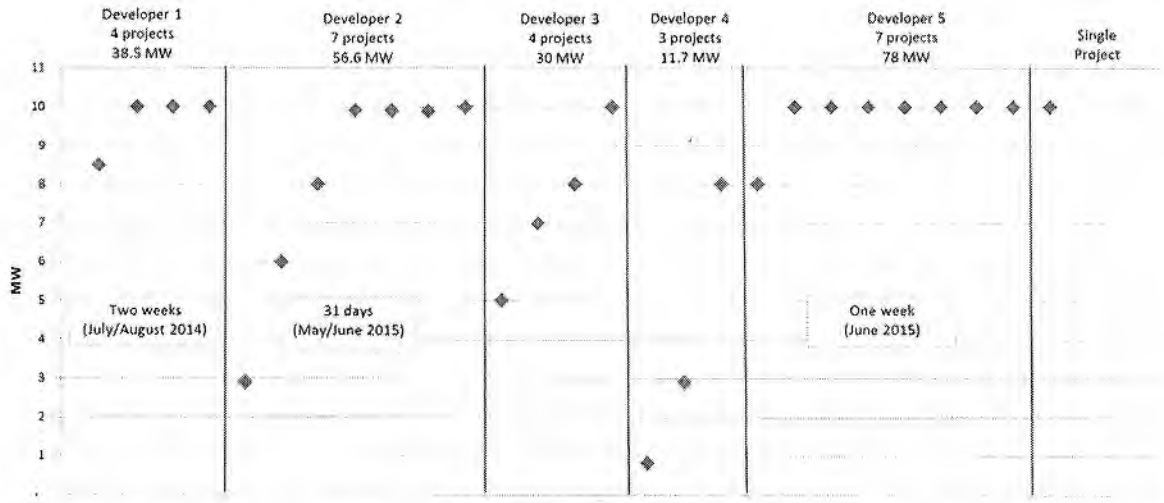
Figure 1 below graphically depicts the solar contracts discussed above, showing the number of projects and their respective MW capacity, grouped by developer. For those with multiple projects at or very near the eligibility cap (9.9 MW), Staff includes the time window within which the standard contracts were executed.

Figure 1.



Similarly, between 2008 and 2014, a single developer executed standard contracts with PacifiCorp for eight wind QFs at and below the 10 MW Eligibility Cap and another executed two standard contracts for two wind QFs, one sized at 9.9 MW and the other at 6.5 MW.[18] Figure 2 below is a graphic representation of this contracting activity as well as of three other standard contracts for wind QFs executed by three different developers.

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[18] Staff/200, Andrus/5. Three other developers each developed a single wind QF below the 10 MW Eligibility Cap between 2008 and 2014.

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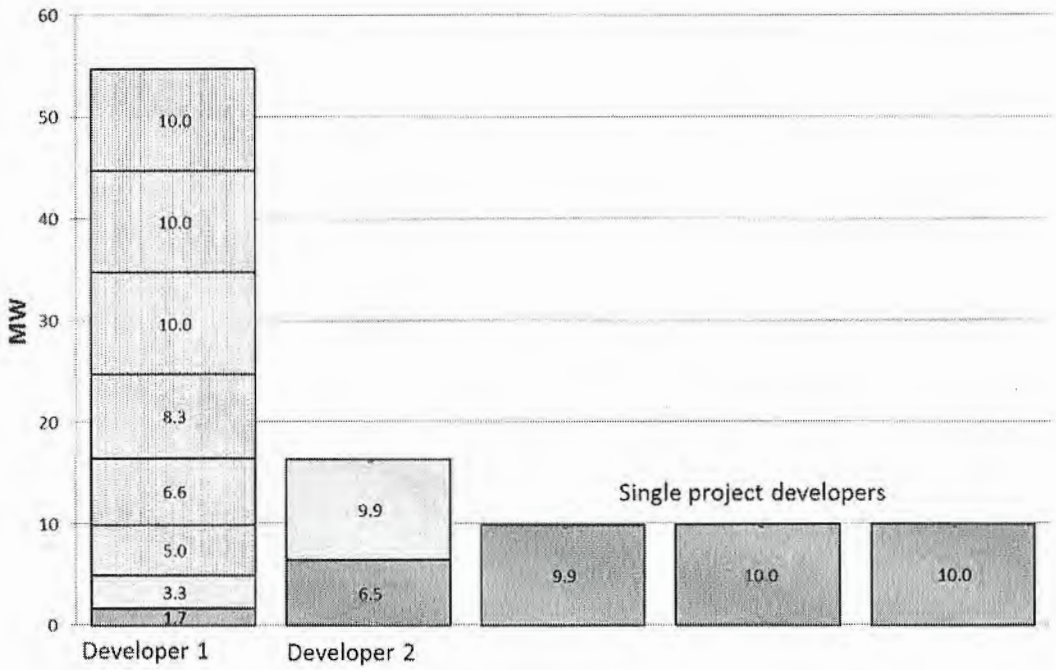
Figure 2.



Staff recommends lowering the Eligibility Cap for solar and wind QFs to a level that may discourage disaggregation but not so low as to exclude from the market the QF developers that may not have the resources to negotiate a long-term contract with the utility.[19] To accomplish these purposes, Staff recommends the Commission establish an Eligibility Cap somewhere between two and four MWs.[20] Staff recommends an Eligibility Cap of at least 2 MW so developers of a single-turbine wind QF are eligible for a standard contract. The majority of wind turbines currently operating in the U.S. are between 1.8 MW and 2.3 MW.[21] Staff recommends an Eligibility Cap no higher than 4 MW to discourage disaggregation.

Under the current Eligibility Cap, a developer could disaggregate a 40 MW project into four different 10 MW projects and obtain standard prices and contracting terms for the entire 40 MW. Under Staff's recommendation, a developer of 40 MW of solar would have to execute at

[19] Staff/200, Andrus/7.
[20] Staff/200, Andrus/7.
[21] See Staff/200, Andrus/9.

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least ten and as many as 20 standard contracts to avoid negotiating a contract with non-standard rates. Staff believes the cost associated with this many standard contracts could be prohibitive, making disaggregation less likely.

Staff's recommendation applies to wind and solar QFs that execute contracts with PacifiCorp because of the relative ease with which these types of resources can be disaggregated. Staff recommends leaving the Eligibility Cap at 10 MW for all other QF types.

3. Staff is not persuaded by testimony of intervenors[22] that oppose lowering the Eligibility Cap.

Obsidian Renewables, LLC, Cypress Creek Renewables, LLC, and the Renewable Energy Coalition oppose lowering the Eligibility Cap for standard contracts between solar and wind QFs and PacifiCorp because PacifiCorp makes it very difficult, if not impossible, to negotiate a non-standard contract.[23] CREA opposes lowering the cap for the reasons it articulated in Docket No. UM 1610; small developers cannot obtain funding until they have an executed power purchase agreement and cannot afford to negotiate a non-standard contract prior to obtaining financing and delays associated with negotiating a contract create significant risk for the developer.[24]

Renewable Northwest asserts that lowering the eligibility cap is inconsistent with Oregon Legislature's goals to "[i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens" and "[c]reate a settled and uniform institutional climate for qualifying facilities in Oregon."[25]

ODOE does not oppose lowering the Eligibility Cap for solar QFs, but does oppose lowering the Eligibility Cap for wind QFs. ODOE testifies that the concern regarding

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[22] Obsidian Renewables, LLC, Cypress Creek, LLC, CREA and the Renewable Energy Coalition oppose lowering the Eligibility Cap. The other intervenors in this docket, Sierra Club and the City of Portland, did not take a position on the Eligibility Cap in testimony.

[23] Obsidian and Cypress Creek/200 and Brown/12-13; Coalition/300, Lowe/3.

[24] CREA/100, Skeahan/4.

[25] Renewable Northwest Prehearing Brief 5-6, *citing* ORS 758.515(3).

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disaggregation is not as great for wind QFs because multiple wind QF sites owned by a single owner cannot be sited within five miles of each other.[26] ODOE also testifies that the economies of scale are such that negotiating a contract for a 10 MW wind QF is a feasible option, whereas negotiating a contract for a smaller wind QF may not be.[27]

The concerns identified by CREA prompted Staff to support a 10 MW Eligibility Cap for all PURPA contracts in Phase I of UM 1610. However, since filing testimony in that case, Staff has observed that the 10 MW cap is not being used by developers of solar QFs to eliminate barriers to entry, but to obtain standard contract prices and terms for large projects disaggregated into multiple projects that are sized below the 10 MW Eligibility Cap. The same is true of two developers of wind QFs between 2008 and 2014.

The Commission did not intend to provide the protection of the Eligibility Cap to QFs larger than 10 MW. The Commission recognizes that there is a balance between the need for avoided cost prices that reflect the characteristics of the individual QF and facilitating small QFs' entry into the market.[28] Staff recommends lowering the Eligibility Cap because of the potential harm to ratepayers from paying large (disaggregated QFs) standard avoided cost prices that do not take into account the individual characteristics of the QFs. Although there will likely be a few QF developers that will be disadvantaged by a reduced Eligibility Cap, Staff believes that this potential harm to a few small developers is outweighed by the protection to ratepayers obtained from lowering the cap.

With respect to the concerns voiced by REC, Obsidian, and Cypress Creek that it is very difficult, if not impossible, to negotiate a non-standard contract with PacifiCorp, Staff believes the correct remedy for this issue is the Commission's dispute resolution process for non-standard contracts, or a complaint filed under ORS 756.500.

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[26] ODOE/200, Broad and Carver/3-4.
[27] ODOE/200, Broad and Carver/3-4.
[28] Order No. 05-584 at 15.

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B. Staff recommends the Commission reject PacifiCorp's request to shorten the term of all PURPA contracts to three years.

1. Previous Commission orders regarding length of PURPA contracts.

In 1984, the Commission ordered utilities to offer standard contracts with terms of up to 20 years to QFs with a nameplate capacity of 100 kW and less.[29] With respect to non-standard contract terms, the Commission noted that 70 percent of the QFs that had entered into PURPA contracts with PacifiCorp had terms of 25-35 years.[30] The Commission ordered utilities to file avoided cost prices for a 35-year period, concluding that "[t]hirty-five years of avoided cost data is needed to "promote the development of a diverse array of permanently sustainable energy resources" and "create a settled and uniform institutional climate for the qualifying facilities in Oregon."[31]

In 1991, the OPUC decided that the term of a non-standard contract should be the result of negotiation between the QF and utility, whether the contract is obtained by competitive bid or implementation of PURPA.[32] However, the Commission noted that "the further into the future [avoided cost] projections are made, the greater the risk the projections will not accurately represent actual conditions at the end of the projection period."[33] To address this risk, the Commission adopted three criteria that the utility and QF should use to determine whether a contract longer than 20 years is warranted:

1. Whether there is a high probability that the resource will be operable well beyond the 20 years.
2. Whether the developer could obtain financing for the resource for contract lengths of less than 20 years; and
3. Whether the resource's physical and cost characteristics make contract terms of more than 20 years advantageous for all parties.[34]

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[29] Order No. 84-720 (1984 WL 1022595).
[30] *Id.*, *quoting* ORS 758.515(2)(a) and (3)(b).
[31] *Id.*
[32] Order No. 91-1383 at 15.
[33] *Id.*
[34] *Id.*

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In 1996, "as the energy industry was undergoing tremendous change and evolving towards more competitive markets[,]" the Commission approved Portland General Electric Company's (PGE) request to shorten the terms of PURPA contracts to five years.[35] Staff supported PGE's request noting that it was difficult to justify contracts more than five years given the continued movement toward a competitive market place for electricity and the prevalence of wholesale transactions for terms of five years or less.[36]

In 2005, the Commission increased the term of the standard contract from five years to 20 years, but limited the fixed-price portion of the contract to 15 years.[37] The Commission explained that a 20-year term with fixed prices for 15 years balanced two goals, the need to accurately price power in the later years of a contract and the need to facilitate financing for a QF project: "[O]ur fundamental objective is to establish a maximum standard contract term that enables eligible QFs to obtain adequate financing but limits the divergence of standard contract rates from actual avoided costs."[38] In 2007, the Commission ordered that QFs negotiating non-standard contracts were entitled to select a contract term of up to 20 years and were not precluded from negotiating a longer term."[39] In Phase I of the Investigation into Qualifying Facility Contracting and Pricing, the Commission declined to change the 20-year contract term or the 15-year fixed price portion of the contract.[40]

2. The circumstances do not support a change in the term of PURPA contracts.

Currently, QFs entering into both standard and non-standard contracts may unilaterally select a contract period of up to 20 years with a fixed-price term of no more than 15 years.[41]

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[35] See Order No. 05-584 at 10, *citing* Staff Public Meeting Memorandum describing circumstances leading to PGE application in 1996.
[36] Attachment A (Staff Public Meeting Memorandum re: PGE Advice No. 96-21).
[37] Order No. 05-584 at 10.
[38] *Id.* at 19.
[39] Order No. 07-360 at 11.
[40] Order No. 14-058.
[41] Order Nos. 05-584 and Order No. 07-360.

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Evidence presented in this proceeding reflects that shortening the maximum term of a PURPA contract to three years would likely have a detrimental effect on the ability of QFs to obtain financing at reasonable terms. For example, a witness for ODOE, the project development officer with the Small-scale Energy Loan Program (SELP), testified that financiers prefer projects that have a power purchase agreement that spans the life of the loan as it eliminates down-side pricing risk and makes underwriting the loan easier.[42] He also testified that "three year QF standard contracts introduce too much price risk into an essentially closed market for the risk tolerance of most lenders, in my experience."[43]

Similarly, a witness for the Community Renewable Energy Association (CREA) testified that three-year contracts would make the financing of small projects impossible because (1) lenders require a revenue stream from the project with sufficient certainty to pay the senior lien debt associated with project financing as well as sufficient operating and maintenance costs over the life of the indebtedness; (2) the term of the loan must be sufficiently long to keep the principle and interest payments low enough to make the project financially feasible; and (3) prudent financial practice would provide for the term of the debt to be comparable to the useful life of the project.[44] And, during cross-examination, PacifiCorp's witness testified that "from a general basis, you know, a longer term contract provides more certainty for them to secure outside financing."[45]

PacifiCorp dismisses the concern that shortening the maximum term of the PURPA contract will inhibit financing for QFs, explaining that "[t]here is no requirement [in PURPA or FERC regulations] to ensure a QF can obtain financing. The obligation is must-take, not "must ensure economic viability."[46] PacifiCorp's disinterest in the economic viability of QFs ignores

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[42] ODOE/100, Hobbs/2.
[43] ODOE/100, Hobbs/2 (emphasis omitted).
[44] CREA/100, Skeahan/6. *See also* Sierra Club/100, McGuire/13 (shortening contract term to three years "would almost certainly prohibit renewable QF developers from obtaining financing.").
[45] January 26 2016 Transcript 8-9.
[46] PAC/200, Griswold/19.

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the Commission's long-standing attempt to implement PURPA by balancing ratepayer protections and QF development.

In the 1981 order adopting rules to implement PURPA, the Commissioner noted the intent of the rules was to "provide maximum economic incentives for development of qualifying facilities while insuring that the costs of such development do not adversely impact utility ratepayers who ultimately pay these costs."[47] The Commission reiterated this intent in its 2005 order addressing PURPA implementation, stating "our intent with regard to implementation of PURPA remains the same as first articulated in 1981. We seek to provide maximum incentives for the development of QFs of all sizes, while ensuring that ratepayers remain indifferent to QF power by having utilities pay no more than their avoided costs."[48] And, the Commission repeated this principle in its 2014 order resolving several issues in Phase I of Docket No. UM 1610.[49]

Allowing QFs to unilaterally select a fixed-price contract term of up to 15 years is more consistent with the Commission's stated principle of providing maximum incentives for development of QFs (while having ratepayers pay no more than the utilities' avoided costs) than a maximum term of three years would be. While a term of three years may limit the risk that the utilities' actual avoided costs will vary from the contracted-to avoided cost prices, the shorter term would almost certainly inhibit rather than incent QF development.

In sum, the Commission has previously determined that allowing QFs to select a 20-year contract with a fixed-price term of 15 years strikes an appropriate balance between the need to facilitate QF financing and the need to ensure ratepayer indifference.[50] Testimony in this proceeding reflects that a longer-term contract is still needed to facilitate affordable financing for QFs. And, no persuasive evidence shows that the risk avoided cost prices will diverge from the

[47] Order No. 81-319 at 3.
[48] Order No. 05-584 at 11.
[49] Order No. 14-058 at 3.
[50] Order No. 05-584 at 11.

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utilities' actual avoided costs over the term of the contract has changed so substantially that it must be re-balanced with shorter contract terms.

C. A 20-year non-standard contract is an appropriate policy choice, but is not required by Oregon statute or PURPA.

1. PURPA does not limit the Commission's discretion to order a contract term for PURPA contracts that is less than 20 years.

CREA, Renewable Northwest, and REC argue the Commission does not have authority to grant PacifiCorp's request to shorten the contract term to three years because Oregon statute requires that utilities offer qualifying facilities contracts with a fixed-price term of at least 20 years.[51] CREA and REC also assert that the Commission is prohibited under PURPA and the FERC's implementing rules to shorten PURPA contracts to three years.[52]

As discussed above, Staff concludes that the policy reasons for allowing QFs to unilaterally select a contract with a term of 20 years have not changed since the Commission adopted the requirement in 2007 and that keeping the length of contracts at 20 years, with a fixed-price term of 15-years, is an appropriate exercise of the Commission's discretion. Although Staff believes the Commission should reject PacifiCorp's request to shorten the term of all PURPA contracts, Staff disagrees that the Commission is *required* to do so by statute or PURPA.

CREA argues that under PURPA, the "[legally enforceable obligation] LEO rule specifically provides the QF with the option to sell energy and capacity over a "specified term" – meaning that the regulation provides the QF with the option to determine the length of the specified term."[53] CREA and REC also assert that under PURPA, QFs must be allowed to enter

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[51] Renewable Northwest Prehearing Brief 3-4; Pre-hearing Brief of the Community Renewable Energy Association12-20; Renewable Energy Coalition Prehearing Brief 2-3.

[52] Pre-Hearing Brief of the Community Renewable Energy Association 9-12; Renewable Energy Coalition Prehearing Brief 3-4.

[53] Pre-Hearing Brief of the Community Renewable Energy Association 9.

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into fixed-price contracts for energy and capacity and that this cannot occur if the contract is for a term of only three years because PacifiCorp is resource sufficient until 2024. [54]

CREA's assertion is inconsistent with the Federal Energy Regulatory Commission (FERC)'s own statements. FERC has stated that it is up to the States to determine the specific parameters of QF contracts:

> It is up to the States, not [FERC], to determine the specific parameters of individual QF power purchase agreements, including the date at which a legally enforceable obligation is incurred under State law. Similarly, whether the particular facts applicable to an individual QF necessitate modifications of other terms and conditions of the QF's contract with the purchasing utility is a matter for the States to determine. This Commission [FERC] does not intend to adjudicate the specific provisions of individual QF contracts.[55]

Under FERC precedent, this Commission has authority to establish a maximum contract length.

Furthermore, although PURPA requires that QFs be compensated for capacity when a purchase from the QF allows the utility to avoid purchasing capacity, PURPA does not require that the Commission structure every contract between the QF and utility so that the QF's sale of output to the utility allows the utility to avoid acquisition of a new resource, and thus be compensated for capacity. The fact that a QF entering into a three-year PURPA PPA would not get payments based on the avoided cost of a new resource is due to the fact PacifiCorp does not need a new resource until 2024. The Commission is not required to include the costs of an avoided resource into the calculation of avoided cost prices when the purchase from the QF will not allow the utility to avoid acquisition of a new resource.[56]

2. Oregon statutes do not limit the Commission's discretion over the term of PURPA contracts.

The assertion of CREA, REC, and Renewable Northwest that the Commission must require contracts with a fixed-price term of at least 20 years is based on their interpretation of

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[54] Pre-Hearing Brief of the Community Renewable Energy Association 11-12.
[55] *Metropolitan Edison Company*, 72 FERC 61,015 (1995 WL 397198).
[56] City of Ketchikan, Alaska, 94 FERC 61,293 at 62,061 (2001 WL 275023) ("[A]n avoided cost rate need not include capacity unless the QF purchase will permit the purchasing utility to avoid building or buying future capacity.").

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ORS 758.525. ORS 758.525(1) provides that every two years, "electric utilities shall prepare, publish and file with the Public Utility Commission a schedule of avoided costs equaling the utility's forecasted incremental cost of electric resources over at least the next 20 years." And, ORS 757.585(2) provides that "at the option of the qualifying facility" the prices for sales under PURPA will be "(a) The avoided costs calculated at the time of delivery; or (b) the projected avoided costs calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred." CREA, et al., extrapolate from these two provisions the requirement that QFs choosing to enter into a contract with avoided costs prices based on the utility's projected avoided costs are statutorily entitled to fixed avoided cost prices for a term that is as long as the utilities' avoided cost projections.[57]

The statutory construction argument presented by CREA, et al., is not persuasive. ORS 758.525 is silent as to the length of PURPA contracts. Inserting a limitation on the Commission's authority to determine contract length would require the Commission to insert language into the statute that is not there, which the Oregon legislature has prohibited reviewing courts from doing. ORS 174.010 provides that "[i]n the construction of a statute, the office of a judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted or to omit what has been inserted[.]"[58] The Commission should also follow this statutory prohibition.

CREA, et al., recognize that ORS 758.525 does not include an express requirement regarding contract length and therefore rely on select legislative history to shore up their argument that ORS 758.525 requires a fixed-price term of at least 20 years for PURPA contracts. However, the legislative history does not offer convincing evidence the legislature intended to limit the Commission's authority to determine the length of PURPA contracts.

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[57] Pre-hearing Brief of the Community Renewable Energy Association 13, Renewable Energy Coalition Brief 2-3, and Renewable Northwest Prehearing Brief 3-4.

[58] *See also State v. Patton*, 237 Or App 46, 50-51, 238 P3d 439 (2010), *rev den*, 350 Or 131 (2011) ("We are prohibited, by statutory command and by constitutional principle, from adding words to a statute that the legislature has omitted.")

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CREA relies on an excerpt of Representative Bill Bradbury's testimony to the Senate Committee on Energy and the Environment and on an exhibit presented by the Oregon Department of Energy to the House Committee on Energy and Environment to show that the legislature intended to require that utilities enter into 20-year contracts with QFs.[59] CREA's, reliance on these pieces of legislative history is misplaced.

First, Representative Bradbury's testimony to the Senate Committee on Energy and Environment is similar to the text of ORS 757.525 in that it does not clearly establish a legislative intent to limit the Commission's authority over the term of PURPA contracts. Representative Bradbury described the requirement to submit forecasted avoided cost prices, and the requirement that utilities must be willing to enter into contracts based on those avoided cost prices, but did not say that the statute requires that length of any contracts executed by the utilities must precisely match their 20-year forecast of avoided cost prices. Representative Bradbury testified:

> Basically this bill requires two things of utilities that are not presently required under federal law. The first requirement is that utilities must make a good faith effort to wheel power if they are not willing to pay a price that is acceptable to the small power producer. * * *
>
> The other thing the bill requires that federal law does not require is that utilities, all utilities, must forecast their avoided costs over a 20 year period looking out into the future. And they have to be willing to enter contract with power producers based on those forecasted avoided costs.
>
> So those are the two things the bill does beyond federal law. You have to make a good faith effort to wheel and you have to forecast your avoided cost into the future and enter into contracts based on that forecast.[60]

Second, even if Representative Bradbury's testimony to the Senate Committee on Energy and Environment could be interpreted as a clear statement that House Bill 2320 prohibits the Commission from specifying a PURPA contract period less than 20 years, this testimony differed

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[59] Pre-hearing Brief of the Community Renewable Energy Association 14-16.

[60] Audio Recording, Senate Committee on Energy and Environment, House Bill 2320, June 15, 1983, Tape 168, Side A.

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from statements Representative Bradbury made to the Chair and other members of the House Committee on Environment and Energy several weeks before. Representative Bradbury chaired a subcommittee appointed to resolve various issues relating to House Bill 2320. The subcommittee met several times during February, March, and April, 1983. When the full House Committee considered House Bill 2320 on April 29, 1983, Representative Bradbury described the bill as follows:

> Madame Chair, members of the committee have before them a draft of the bill numbered Legislative Counsel 2320-2, which has included in it some hand-engrossed amendments. The hand-engrossed amendments are the result of getting this draft back from counsel and simply wanting to conform the legislative counsel draft to the intent of the subcommittee.
>
> Essentially, what House Bill 2320 does is one thing beyond current federal law. And that is that it requires utilities, public and private, to make a good faith effort to wheel power to another utility if the qualifying facility so requests. Under present federal law, all utilities are required to pay the avoided cost to any qualifying facility for their power. The addition that this law makes to the federal law is that utilities are required to make a good faith effort to wheel that power to a utility that can provide a better price. That is basically, the only change this bill makes from federal law. It requires that the utilities, public and private, file their avoided cost rates and their wheeling rates with the public utility commissioner. The public utility commissioner would have authority to review the rates that are submitted by the investor-owned utilities and would simply be the repository for the rates filed by the publicly-owned utilities. [61]

The House Committee on Environment and Energy adopted the proposed hand-engrossed amendments on April 29, 1983, and passed the bill as amended out of the full committee on May 4, 2015.[62] The House of Representatives voted to pass House Bill 2320 on May 17, 1983.[63] Accordingly, the version of the bill described by Senator Bradbury in testimony to the Senate Committee on June 15, 1983, was the version of the bill he described to the House Committee on April 29, 1983.

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[61] Audio Recording, House Committee on Environment and Energy, April 29, 1983 (Tape 178, Side A, Counter Nos. 156-183).

[62] See Attachment 1; Minutes from House Committee on Environment & Energy meetings on April 29, 1983 (at p 3) and May 4, 1983 (at pp 1-2).

[63] See Attachment 2; Agenda for House Floor Session for May 17, 1983.

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Representative Bradbury's comments to the full House Committee on Environment and Energy contravene the suggestion that the legislature as a whole intended to mandate that utilities enter into 20-year PURPA contracts and to limit the Commission's discretion to specify another contract term. Even assuming *arguendo* that Representative Bradbury's testimony to the Senate Committee suggests utilities are required under House Bill 2320 to enter into contracts with at least 20-year terms, the Commission cannot be sure whether the legislature as a whole understood this is what House Bill 2320 required.

And more importantly, the Commission should not conclude that Representative Bradbury's testimony to the Senate Committee establishes that utilities are required to enter into PURPA contracts with terms of at least 20 years and that the Commission has no authority to authorize a shorter term. The statute does not expressly limit the Commission's authority, and the Commission should not infer that the legislature intended to do so.[64]

The testimony of ODOE cited by CREA does state that House Bill 2320 imposes a requirement on utilities to enter into contracts with 20-year terms.[65] However, the Commission should not infer any particular legislative intent from the testimony of one committee witness. This is particularly true here when the representative chairing the subcommittee on House Bill 2320 did not explicitly testify regarding this requirement when describing the bill to the Senate and House Committees that considered the bill.

As discussed above, Staff disagrees with any argument that ORS 758.525 or PURPA limits the Commission's discretion order a term for PURPA contracts that is less than 20 years. Staff does not, however, agree with PacifiCorp's proposal to shorten the term of negotiated contracts. For the policy reasons stated above, Staff recommends that the Commission reject PacifiCorp's proposal to shorten the contract terms to three years.

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[64] *Cf. State v. Hess*, 342 Or 647, 661 (2007) ("We are reluctant to infer from the legislature's silence an intent to deprive the court of its traditional authority * * *.").

[65] See Pre-hearing Brief of the Community Renewable Energy Association at 14-15.

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III. Conclusion

Staff recommends that the Commission lower the Eligibility Cap for PacifiCorp standard contracts with wind and solar QFs to somewhere between two and four megawatts and deny PacifiCorp's request to shorten the term of all PURPA contracts to three years.

DATED this 12th of February, 2015.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

Kaylee Klein #143614
for

Stephanie S. Andrus, #925123
Senior Assistant Attorney General
Of Attorneys for Staff of the Public Utility Commission of Oregon

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HOUSE COMMITTEE ON

ENVIRONMENT & ENERGY

April 29, 1983 1:30 p.m. Hearing Room "E"

Members Present: Rep. Darlene Hooley, Chair
Rep. Andy Anderson, Vice Chair
Rep. Bill Bradbury
Rep. Larry Hill
Rep. Fred Parkinson
Rep. Wally Priestley
Rep. Tom Throop
Rep. George Trahern

Member Absent: Rep. Liz VanLeeuwen

Staff Present: Elizabeth Samson, Committee Administrator
Carol Moyle, Committee Assistant

Witnesses: Rep. Chuck Bennett, District 38
Bill Roger, Board of Directors, Lane County Regional Air Quality Control Advisory Committee
Don Arcel, Lane County Regional Air Quality Control Advisory Committee
Rep. Andy Anderson, District 45
W. C. Harris, Oregon State Grange
William Davis, Citizen
Harley Brown, Citizen
Mike Hefner, Boise Cascade Corporation
Fred D. Ehlers, Citizen
Bill Miller, Citizen
Mike Jacobs, Utility District Lobby
Lon Topaz, Emerald Peoples Utility District
Jack Madison, People's Utility District
Tease Adams, Energy Control Systems
Stanley Rasmussen, Citizen
Lee Freeman, Vice Prsident, Pacific Hydropower Company, Commerce, California
Dick Webb, Citizen
Bessie Ridenour, Citizen
Larry Slotta, Citizen
Ellis Forrester, Citizen
James Noteboom, Attorney
Confederated Tribes of Warms Springs Reservation
Jan Bettcher, Tumalow Water District
Ron Nelson, Central Oregon Irrigation District
Frederick Plug, Citizen
Gary Marcus, Citizen
Hal Burkitt, Citizen
Jim Boyd, Citizen
Roy Rousch, Citizen
Michael Weinberg, Citizen
Jack Fuls, Citizen

Dick Brown, Portland Power & Light
Carl Talton, Portland Power & Light

Measures: HB 2320 - Relating to purchase of power from co-genators small power producers/Work Session
HB 2407 - Relating to PUD acquisition of hydro/thermal power projects/Public Hearing
HB 2952 - Relating to Regional Air Quality Control Authority Advisory Committee/Public Hearing, Work Session
HB 2406 - Relating to appropriation of hydro power projects/Public Hearing

TAPE H-83-EE-178, SIDE A

006 **CHAIR HOOLEY** called the hearing to order at 1:52 p.m. and opened the public hearing on **HB 2952.**

021 **MOTION** by **REP. PARKINSON** to untable HB 2406 and HB 2407. No committee objection; so moved.

022 **REP. CHUCK BENNETT** stated HB 2952 is essentially a housekeeping measure extending the length of the Advisory Committee terms from one to three years and allows for the establishment of staggered terms so there isn't an annual massive turn over on this Board.

040 **BILL ROGERS**, stated this is the only regional air quality authority in the State of Oregon, so the bill only affects Lane County. He further stated the Advisory Committee had asked that one of the mandated positions be added to the Committee, Fire Suppression Agency.

056 **MR. ROGERS** answered clarifying questions for committeemembers regarding the Board of the Advisory Committee.

076 MOTION by **REP. ANDERSON** to move the amendments asked by Mr. Rogers, inserting "Fire Suppression Agency" and renumbering the following items.

080 Motion passed 7 to 2 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern, and Hooley voting Aye and Rep. Throop and VanLeeuwen absent.

090 **MOTION** by **REP. ANDERSON** to move HB 2952 to the Floor with a Do Pass Recommendatin.

095 Motion passed 7 to 2 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern and Hooley voting Aye and Rep. Throop and VanLeeuwen absent.

100 **REP. TRAHERN** agreed to carry the bill. It was also placed on the consent calendar.

108 **CHAIR HOOLEY** opened the work session on **HB 2320** with **REP. BRADBURY** explaining what HB 2320 does with the amendments developed in subcommittee.

146 **REP. THROOP** asked how "good faith effort" is defined.

148 **REP. BRADBURY** stated the definition is on Page 4, Line 23. (Exhibit A).

155 Committee discussion ensued regarding the subcommittee amendments.

197 **MOTION** by **REP. BRADBURY** to adopt amendments to HB 2320. No objection; so moved.

206 **MOTION** by **REP. BRADBURY** to moved HB 2320 to the floor with a Do Pass recommendation.

218 **REP. TRAHERN** asked to hold a work session on this bill at the next hearing to vote it out of Committee, stating since they had just received the amendments, he would like additional time to read over them. **REP. BRADBURY** agreed to withdraw his motion.

228 **CHAIR HOOLEY** opened public hearings on **HB 2406** and **HB 2407.**

244 **REP. ANDERSON**, sponsor of the bills, stated there is an economic development problem in the State and feels the small hydro power electric plants are in jeopardy of being taken over by the larger investor owner projects and feels these bills will address the problem, recommending under HB 2406 repealing section 543.610 regarding comdemnation rights, deleting the provision on water rights at the request of the Water Resources Department and also 543.620 and the section that has to do with State ownership and how to dispose of leasing rights, etc., feeling they are not extremely important.

326 **W.C. HARRIS testified in opposition to both bills, seeing no use for them. Stating further, the Constitution of this State belongs to the public and would like to see it reamin that way.**

383 **WILLIAM C. DAVIS** testified in favor of both bills. (Exhibit B)

461 **HARLEY BROWN** testified regarding his own personal farm experience and why he is in favor the these two bills. (Exhibit C)

TAPE H-83-EE-179, SIDE A

033 **MR. BROWN** completed his testimony.

050 **MIKE HEFNER** testified in favor of both bills. (Exhibit D)

115 **FRED ELHERS** testified in favor of the bill stating that particular piece of legislation, 543.610, opens the way for cities like Klamath Falls to feather their nests at the expense of the private sector and continued with examples of how the City has benefited and feels it creates disincentives for the private production of power. He also answered clarifying questions for committee members.

189 **BILL MILLER** testified in favor of both bills stating they support HB 2406 and 2407, but their union does not favor public power in lieu of private power or visa versa. The feels the bill would enhance free enterprise in this company. They oppose condemnation on either side and feel once you build something, someone should not be allowed to take it away from you. He continued answering clarifying questions for committee members.

229 **REP. THROOP** asked if the bill deals with all condemnation or just a small segment.

232 **REP. ANDERSON** stated he believes the bill deals with hydroelectric power projects regardless of who the owner is or who the entity is that would like to condemn.

240 **REP THROOP** stated he would like to get an interpretation of that. **CHAIR HOOLEY** stated **BETH SAMSON**, Committee Administrator, would get one.

242 **MIKE JACOBS** testified in opposition to HB 2406 and answered clarifying questions for committee members. (Exhibit E)

346 **LON TOPAZ** testified in opposition to HB 2406 and 2407. (Exhibit F)

TAPE H-83-EE-178, SIDE B

026 **MR. TOPAZ** answered clarifying questions for committee members regarding public power vs. private power and customer rates.

091 **JACK MADISON** testified in opposition to the bills stating they will take away constitutional authority of P.U.D.'s to acquire from condemnation.

140 **TEASE ADAMS** testified in favor of HB 2406 and 2407 and answered clarifying questions for committee members. (Exhibit G)

285 **STANLEY RASMUSSEN** testified in oppostion to HB 2406 (Exhibit H)

359 **LEE FREEMAN** testified in favor of HB 2406 and 2407. (Exhibit I)

451 **DICK WEBB** testified in favor of HB 2406 and 2407. (Exhibit J)

TAPE H-83-EE-179, SIDE B

027 **MR. WEBB** continued answering clarifying questions for committee members.

061 **BESSIE RIDENOUR** testified in favor of HB 2406 and 2407 relating their own personal experience of building their own hydro power plant and her feelings about the possibility of them being taken away and also the laws preventing them from passing it on to their children. She also testified that a copy of the laws regarding private hydro power plants should be given to applicants when first applying for permits instead of when their license is sent to them, which is when it's too late to change your mind regarding building. She continued answering clarifying questions for committee members.

283 **LARRY SLOTTA** testified in favor of HB 2406 and 2407. (Exhibit K).

325 **ELLIS FORRESTER** testified in favor of HB 2406 and 2407 and his own experience of building a private hydro plant and his feelings regarding PUD's taking over smaller plants.

356 **JAMES NOTEBOOM** testified in favor of HB 2406 and 2407 and talked about the Warm Springs Tribal hydro power projects. (Exhibit L)

TAPE H-83-EE-180, SIDE A

035 **JAN BETTCHER** testified in favor of HB 2406 and 2407 and continued telling committee members about the irrigation district she works for in Bend regarding the projects they do, private funding they obtain, and the people they employ and feel bills not passing would jeopardize all of this. She continued answering clarifying questions for committee members.

124 **RON NELSON** testfied in favor of both bills stating the bills are a positive step to eliminate the conflict that will develop in the community since 543.610 imposes a threat to their utility district even though they are a quasi-municipality. He continued ansering clarifying questions for committee members regarding condemnation.

173 **FREDERICK PLUG** testified in favor of the bill stating his is in the process of completing a paper to set up a small project on the stream on his farm. He further stated private financing was refused to him because of possible state take over ordinance.

229 **GRAY MARCUS** testified in favor of HB 2406. (Exhibit M)

299 **HAL BURKITT** testified in favor of HG 2406 and 2407 talking about the similarity of these bills and HB 2320 and states these two bills are diametrically opposed to HB 2320, which the committee expressed support of, therefore, does not see how any of the committee members can vote against HB 2406 or HB 2407. He feels without its passage it would bring to a stop the development of another very viable resource in Oregon, which is hydro electric power.

382 **JIM BOYD** testified in favor HB 2406 and 2407 regarding the difficulty in securing private financing for small hydro projects because of the condemnation ordinance. He further stated the size of the project should not make any difference, its not right to be able to take a lucrative project away from a person or company. He continued answering clarifying questions for committee members.

TAPE H-83-EE-181, SIDE A

053 **JIM BOYD** continued his discussion regarding the policy of condemnation five years depreciation of the project, and the fact that the statute needs to be changed.

091 **MAURICE BAKER** testified in favor of 2406 and 2407 supporting previous testimony.

101 **ROY ROUSH** tetified regarding his own personal experiences in building his own hydro project and that it won't be taken away from him easily.

121 **MIKE WINEBERG** testified in favor of HB 2406 stating he does not want to take anyone's project away from them and his company is building two projects for their water control district users. He stated further the argument that some people are using that the water of the State of Oregon belongs to the public is a completely ridiculous argument and is not an argument in favor of the State taking over a hydroelectric project that uses that water.

159 **AUSTIN COLLINS** testified in opposition to HB 2406 and 2407.

224 **JACK FULS** testified in favor of both bills and talked about his own experience of starting a small hydro project in Bend and the loss of revenue to State from these small projects if they are taken over by P.U.D.s.

293 **CARL TALTON** testified in favor of HB 2406. (Exhibit N)

TAPE H-83-EE-180, SIDE B

081 **DICK BROWN** testified briefly in favor of HB 2406 and stated he would finish his testimony at the next public hearing on this bill.

088 Meeting adjourned at 4:50 p.m.

Respectfully Submitted

Carol Moyle
Committee Assistant

TAPE LOG:
H-83-EE-178
H-83-EE-179
H-83-EE-180
H-83-EE-181

TAPE LOG:

Exhibit A - HB 2320 Proposed Amendments
Exhibit B - HB 2406 & 2407 Testimony, William C. Davis*
Exhibit C - HB 2406 & 2407 Testimony, Harley Brown*
Exhibit D - HB 2406 & 2407 Testimony, Mike Hefner*
Exhibit E - HB 2406 Testimony, Michael Jacobs
Exhibit F - HB 2406 & 2407 Testimony, Lon Topaz*
Exhibit G - HB 2406 & 2407 Testimony, Teace Adams*
Exhibit H - HB 2406 Testimony, CP National Corporation
Exhibit I - HB 2406 & 2407 Testimony, Lee Freeman*
Exhibit J - HB 2406 & 2407 Testimony, Richard G. Webb*
Exhibit K - HB 2406 & 2407 Testimony, Larry S. Slotta*
Exhibit L - HB 2406 & 2407 Testimony, James Noteboom*
Exhibit M - HB 2406 Testimony, Gary Marcus
Exhibit N - HB 2406 Testimony, Carl Talton

*See HB 2406 for all of the above testimony that includes HB 2407

SEE HB 2406 Exhibits B, C, D, F, G, I, J, K, & L dated April 29 for testimony on HB 2407.

HOUSE COMMITTEE ON

ENVIRONMENT & ENERGY

May 4, 1983 1:30 p.m. Hearing Room "E"

Members Present: Rep. Darlene Hooley, Chair
Rep. Andy Anderson, Vice Chair
Rep. Bill Bradbury
Rep. Larry Hill
Rep. Fred Parkinson, Arrived 1:45 p.m. Rep. Wally Priestley
Rep. Tom Throop
Rep. George Trahern, Arrived 1:45 p.m. Rep. Liz VanLeeuwen

Staff Present: Elizabeth Samson, Committee Administrator
Carol Moyle, Committee Assistant
Elizabeth Norman, Legislative Counsel

Witnesses: Pat Amadeo, Assistant to the Governor
Jim Ross, LCDC
Craig Greenleaf, LCDC
Bob Stacey, 1000 Friends of Oregon

Measures: HB 2295 - Relating to land use planning/Work Session
HB 2320 - Relating to purchase of power from cogenators/small power producers-Work Session

TAPE H-83-EE-191, SIDE A

004 **CHAIR HOOLEY** called the hearing to order at 1:37 p.m. and opened the work session on **HB 2320.**

008 **REP. BRADBURY** discussed the word changes made in the hand engrossed bill that came from the subcommittee stating on Line 16, Page 3 changing public to electric and on Line 27 changing utility to facility. (Ehxhibit A).

045 **BETH SAMSON** asked regarding Page 3, Line 14 and 15, deleting of the wording "electric utility", leaves the meaning unclear as to whose obligation is being talked about.

051 **REP. BRADBURY** stated (a) allows for the avoided cost schedule to be based to go up or down as the avoided cost rises over a period of time; (b) allows for the contract to provide that they would pay the projected avoided cost calculated at the time the obligation between the qualifying facility and the utility is entered into. This applies to all utilities so there is no intention to apply it to only investor owned or public.

076 **REP. BRADBURY** stated he wanted to imply clear legislative intent regarding Section 4, Page 3. The

language states "The commissioner shall establish minimum criteria that a cogeneration facility or small power production facility must meet to qualify as a qualifying facility under this Act." The subcommittee's intent that the Public Utilities Commissioner adopt standards which whould apply statewide to all facilities that would be used to judge all qualifying facilities. It is not the intent of the subcommittee to have the Public Utility Commissioner reviewing every facility to see whether they think it qualifies.

119 **MOTION** by **REP. BRADBURY** to move HB 2320 as amended to the floor with a Do Pass Recommendation.

122 Motion passed 7 to 0 with Rep. Anderson, Bradbury, Hill, Priestley, Throop, VanLeeuwen, and Hooley voting Aye and Rep. Parkinson and Trahern absent. **REP. BRADBURY** will carry the bill on the floor.

129 **CHAIR HOOLEY** opened work session on HB 2295 and discussed the legislative counsel draft No. 4 and stated the consensus group that went through it and marked policy decisions that needed to be discussed yet by the committee. She also introduced the 5-4-83 memo of proposed amendments/corrections to **HB 2295** completed by **BETH SAMSON.** (Exhibit B)

198 The first item discussed was Page 15, Line 17, relating to Notice by LCDC of plan amendment. (Exhibit B)

214 **MOTION** by **REP. THROOP** that LCDC continue to provide notice of plan amendments. No committee objection; so ordered.

222 Page 14, Line 4 (Exhibit B) was explained by **CHAIR HOOLEY** and discussed by committee members.

303 **MOTION** by **REP. THROOP** to reinstate lines 4-9, page 14, the original concept which provided that when the plan amendment or regulation differs from the proposal and notice to such a degree that the notice did not reasonably describe the nature of the local government action, any person may appeal. No committee objection; so ordered.

317 Page 22, Line 16 -(Exhibit B) was explained by **CHAIR HOOLEY.** Committee discussed the word changes and the impact this change would have on the whole bill. No committee objection; so ordered.

458 Page 27, Line 16 (Exhibit B) was explained by **CHAIR HOOLEY** and discussed by the committee.

TAPE H-83-EE-192, SIDE A

037 **MOTION** by **REP. THROOP**to delete "found" and insert "deemed" throughout the entire bill. No committee objection; so ordered.

047 Page 32 (Exhibit B) discussed by **CHAIR HOOLEY.**

052 **MOTION** by **REP. THROOP** to move that language to allow the LDRP to travel to various jurisdictions be added to Page 32. No Committee objection; so ordered.

085 Page 40 (Exhibit B) **CHAIR HOOLEY** discussed "escape hatch" and stated on Line 13 delete "or other problems" because it is presumed to be too broad for the intent of the committee. **BETH SAMSON" stated the language for this section came from the Federal speedy trial act, which governs Federal criminal cases. Cases that are very unusual or complex LDRP does not need to make a decision within that 77 days. On Page 40 Line 16 there is a provision that none of these delays shall take place because of general conjestion on the Panel calendar or lack of diligent preparation or attention to the case by any member of the Panel or any party.**

144 **MOTION** by **REP. THROOP** to adopt LDRP escape hatch language. No committee objection; so ordered.

163 CHAIR HOOLEY discussed substantial compliance and the definition as stated in Exhibit B.

206 Committee discussion ensued with **JIM ROSS** regarding LCDC's process in relation to technical or minor in nature.

336 **MOTION** by **REP. TRAHERN** to delete the fact that a failure to meet goal requirement affecting a small land use area does not in itself render a defect minor in nature.

340 Committee discussion took place regarding Rep. Trahern's motion.

455 Motion passed 9 to 0 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern, Throop, VanLeeuwen, and Hooley voting Aye.

460 **CHAIR HOOLEY** stated the next issue for discussion is periodic review and continued to explain it.

TAPE H-83-EE-191, SIDE B

026 **CHAIR HOOLEY** continued discussing small cities and counties where no growth or major changes are occurring stating they should not have to be involved in hiring planners to do a regular periodic review.

081 **PAT AMADEO** continued discussing the small cities.

099 **JIM ROSS** stated the Commission feels that by Administrative Rule they can create an abbreviated review for state jurisdictions.

136 **MOTION** by **REP. BRADBURY** to adopt amendments proposed related to periodic review (Exhibit B) that the Commission shall adopt by Rule procedures to expedite the periodic review of the communities identified in this admendment and that unless requested by local government and the Commission shall coordinate their review with the local review process in doing the scheduling.

150 Committee discussion with **JIM ROSS** ensued regarding periodic review.

195 **Rep. HILL** asked about cities that has substantial urban population outside the city limits that would bring it to the 2500 level. Should the committee use urban growth boundry, instead of City.

198 **JIM ROSS** stated in the draft language, they have used urban growth boundry population of 2500 and felt it could be taken care of through Administrative Rule. He feels this would affect less than 10 percent of the communities in Oregon.

205 Committee discussion continued regarding using city limits or urban growth boundry to determine the size of a city to be able to use an abbreviated periodic review.

401 **BURTON WEAST** stated on Page 23 there is a definition dealing with the requirement of having an urban growth plan that has 2500 people. He strongly urges that there be a consistant definition for those cities that are required to have a capital improvement program as in periodic review since periodic review triggers the capital improvement program.

473 **MOTION** by **REP. HILL** to delete "cities" in the conceptual amendment and replace it with "urban growth boundries containing a population under 2,500."

TAPE H-83-EE-192, SIDE B

025 Committee discussion regarding this motion took place.

056 **ELIZABETH NORMAN** pointed out that on Line 15 on Page 23 should read "a city within an urban growth boundry containing a population grater than 2500 persons or a county containing a population of more than 2500 persons." She continued discussing this issue with committee members.

100 Motion failed 6 to 3 with Rep. Anderson, Bradbury, Parkinson, Trahern, VanLeeuwen and Hooley voting Nay and Rep. Hill, Priestley, and Throop voting Aye.

112 **MOTION** by **REP. ANDERSON** to adopt periodic review amendment in Exhibit B with the provisions that added that local government can request an earlier periodic review and that periodic review should be coorindated between the Commission and the local government. No committee objection; so ordered.

143 **CHAIR HOOLEY** stated sanctions is the next issue for discussion in Exhibit B and explained counties and cities lobbyists felt the enforcement order did not fit the crime. Also, there was some argument on the withholding of State shared revenues in connection with Goal plans.

200 **JIM ROSS** discussed LCDC standards for issuing enformcent orders with **PAT AMADEO** and committee members.

343 MOTION by **REP. BRADBURY** to move the provisions on sanctions contained in Exhibit B.

348 **REP. HILL** requested the motion be divided into enforcement and State share revenue.

355 Motion on enforcement order passed 9 to 0 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern, Throop, VanLeeuwen, and Hooley voting Aye.

365 Motion on State shared withholding passed 8 to 1 with Rep. Anderson, Bardbury, Parkinson, Priestley,

Trahern, Throop, VanLeeuwen, and Hooley voting Aye and Rep. Hill voting Nay.

395 **CHAIR HOOLEY** stated the next issue is standing, Exhibit A, explaining they only added under "was entitled to notice", the lines "and shows good cause for failure to appear" so the decision can be appealed only for abuse of descretion.

421 Committee discussion ensued regarding this change and other possible word changes.

TAPE H-83-EE-193, SIDE A

044 **MOTION by REP. HILL** to adopt the language "shows good cause for failure to appear" in standing. No committee objection; so ordered.

056 **CHAIR HOOLEY** stated the next issue for discussion is Court of Appeals (Exhibit B) and stated the consensus committee felt the present language on Page 43, Lines 13 - 15 regarding the Court reaching a final decision within 91 days after or agrument is still too loose, so they discussed putting the language back in and giving them the same escape hatch that was given to LDRP.

068 **MOTION** by **REP. THROOP** to adopt the language for the Court of Appeals and the escape hatch.

072 Committee discussion with **BOB STACEY** ensued regarding deadline for the Court of Appeals.

156 Motion passed 7 to 2 with Rep. Anderson, Bradbury, Hill, Priestley, Trahern, VanLeeuwen, and Hooley voting Aye and Rep. Parkinson and Throop absent.

246 Hearing adjourned 3:55 p.m.

Respectfully Submitted,

Carol Moyle
Committee Assistant

TAPE LOG:
Tape H-83-EE-191
Tape H-83-EE-192
Tape H-83-EE-193
Tape H-83-EE-194

SIXTY - SECOND OREGON LEGISLATIVE ASSEMBLY

Regular Session, 1983

HOUSE

Third Reading

TAPE 12

TRACK II

TUESDAY, MAY 17, 1983

HOUSE CONVENES AT 10:45 A.M.

PROPOSITIONS AND MOTIONS:

Consideration of Committee Report:

677

HB 2579 By Representatives FAWBUSH, BAUMAN, BRADBURY, BROGOITTI, BURROWS, CEASE, MARKHAM, MASON, MYERS, OTTO, Senators BROWN, COHEN, HANLON, MCCOY, MCFARLAND, TROW, Representatives B. ROBERTS, SPRINGER, Senators GARDNER, POTTS, RIPPER, ROBERTS, RYLES — Relating to compensation of certain public officers; creating new provisions; repealing ORS 292.313, 292.405, 292.410, 292.415 and section 2, chapter 816, Oregon Laws 1981; and prescribing an effective date.

2-14(H) First reading. Referred to Speaker's desk. adopted
2-18 Referred to Legislative Rules and Operations.
4-18 Tabled in committee pursuant to House Rule 8.20.
5-10 Taken from table in committee.
5-13 Recommendation: Do pass with amendments, be referred to Ways and Means.

This measure has a fiscal impact.

HB 2579

Establishes Public Officials Compensation Commission. Requires commission to review salaries of certain elected officials and to make recommendations to Legislative Assembly. Specifies methods by which Legislative Assembly fixes salaries.

Effective July 1, 1985, repeals certain statutory salaries.

HOUSE MEASURES:

694

HB 2010 By Representative KERANS — Relating to the Governor's budget; amending ORS 291.216, 291.232 and 291.254.

2-10(H) First reading. Referred to Speaker's desk.
2-17 Referred to Legislative Rules and Operations.
4-18 Tabled in committee pursuant to House Rule 8.20.
5-10 Taken from table in committee.
5-12 Recommendation: Do pass with amendments, be printed engrossed.
5-16 Second Reading.

A-Eng. HB 2010

Requires Governor's biennial budget submitted to Legislative Assembly to rely on estimated revenues. Prohibits use of as yet unenacted tax sources to balance Governor's plan. **Prohibits reduction by Governor or Executive Department of agency budgets except on uniform percentage basis.**

878

HB 2320 Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed. (at the request of Department of Energy) — Relating to energy; creating new provisions; amending ORS 757.005; repealing ORS 758.500, 758.510, 758.520 and others; and declaring an emergency.

1-11(H) First reading. Referred to Speaker's desk. Passed
Referred to Environment and Energy.
5-12 Recommendation: Do pass with amendments, be printed engrossed.
5-16 Second Reading.

A-Eng. HB 2320

Modifies definition of public utility to exclude cogeneration facility and small power production facility.

Requires public utility to **offer to** purchase, **and to make good faith effort to** [*or*] transmit, energy produced by cogeneration facility or small power production facility. **Establishes criteria for determining price.** [*Requires electric utility to offer to supply onsite power demands of cogeneration or small power production facility.*] **Prohibits electric utility from discriminating against cogeneration or small power production facility in rates for sale of electricity to facility.**

Declares emergency, effective [*July 1, 1983*] **on passage.**

HB 2972 By COMMITTEE ON HOUSING AND URBAN DEVELOPMENT — Relating to investments; amending ORS 293.726.

4-25(H) First reading. Referred to Speaker's desk.
4-28 Referred to Housing and Urban Development.
5-12 Recommendation: Do pass with amendments.
5-16 Second Reading.

HA to HB 2972

[*Deletes 35*] **Raises to 50 percent the limit on common stock investment of moneys in Public Employes' Retirement Fund and**