Received
7-25-23
1:59 p.m.
dbd

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF DESCHUTES

NEWSUN ENERGY LLC, a Delaware limited liability company, Petitioner, v. OREGON PUBLIC UTILITY COMMISSION, an agency of the State of Oregon, Respondent.	Case No. 23CV28605 **SUMMONS** (Oregon Public Utility Commission)

TO: Oregon Public Utility Commission
201 High Street SE, Suite 100
Salem OR 97301-3398

You are hereby required to appear and defend the petition filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in the case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the petition.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "Appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland Metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

Casey M. Nokes — OSB No. 076641
ATTORNEY'S/AUTHOR'S NAME (TYPED OR PRINTED) — BAR NO (IF ANY)

Cable Huston LLP
1455 SW Broadway, Suite 1500
ADDRESS

Portland, Oregon 97201-3412 — (503) 224-3092
CITY STATE ZIP — PHONE

(503) 224-3176 — cnokes@cablehuston.com
FAX (IF ANY) — ATTORNEY'S EMAIL ADDRESS (IF ANY)

Casey M. Nokes — OSB No. 076641
TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED) — BAR NO.

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

ATTORNEY(S) FOR PLAINTIFF(S)

CABLE HUSTON LLP
1455 SW Broadway, Suite 1500
Portland, Oregon 97201-3412
Telephone (503) 224-3092
Facsimile (503) 224-3176

According to ORCP 7A, a "a true copy of a summons and complaint" means an exact and complete copy of the original documents. No signed Certification to that effect is necessary.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF DESCHUTES

NEWSUN ENERGY LLC, a Delaware limited liability company, Petitioner, v. OREGON PUBLIC UTILITY COMMISSION, an agency of the State of Oregon, Respondent.	Case No. 23CV28605 **PETITION FOR JUDICIAL REVIEW PURSUANT TO ORS 183.484** (Oregon Administrative Procedures Act, ORS 183.310-183.690) Statutory Fee: ORS 21.135(2)(e)

Petitioner NewSun Energy LLC ("NewSun") petitions for judicial review of a final order in other than contested case ("Petition") pursuant to ORS 183.484 and alleges as follows:

OVERVIEW OF THE CASE

1.

This Petition arises out of the Oregon Public Utility Commission's ("OPUC" or the "Commission") Order No. 23-179 (the "Final Order") in *In the Matter of Public Utility Commission of Oregon, Proposal to Establish an Interim Solar + Storage Standard Avoided Cost Rate*, Docket No. UM 2000 ("UM 2000"). In the Final Order, issued on May 18, 2023, the Commission adopted the recommendation of the Oregon Public Utility Commission Staff ("Staff") regarding implementation of an interim solar plus storage avoided cost rate. NewSun files this petition because the adopted solar plus storage rate amounts to a variable capacity rate in violation of the Public Utility Regulatory Polices Act of 1978 ("PURPA"), Oregon law, and the Commission's rules. The solar plus storage rate also fails to encourage the development of

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

qualifying facilities ("QFs") as required by PURPA and is not supported by substantial evidence or reason.

2.

Under PURPA, utilities must purchase energy or capacity from QFs at the utilities' avoided cost rate. The avoided cost rate is intended to reflect the cost that the purchasing utility would incur to generate, or to obtain from another supplier, the same quantity and quality of energy or capacity but for the sale from the QF. The goal of PURPA is to "encourage" the development of QFs—which include cogeneration and renewable energy facilities smaller than 80MW—in order to diversify the nation's energy mix and curb reliance on any single fossil fuel source. *Allco Renewable Energy Ltd. v. Massachusetts Electric Co.*, 208 F Supp 3d 390, 392 (D Mass 2016), *aff'd*, 875 F3d 64 (1st Cir 2017). By paying QFs the utilities' avoided cost rate, there is no additional cost incurred by the utilities' ratepayers to develop QFs.

3.

States implement PURPA by ensuring that utilities interconnect with and purchase energy or capacity from QFs at their avoided cost rate. Oregon implements PURPA pursuant to ORS 758.505 to 758.555. Under this Oregon law, QFs are entitled to sell energy or energy and capacity at fixed avoided cost rates that are determined either at: (a) the time of delivery; or (b) the time "the legal obligation to purchase the energy or energy and capacity is incurred." ORS 758.525(2)(a), (b). Oregon law delegates to the Commission responsibility for reviewing and approving the avoided cost rates paid by investor-owned utilities to QFs. ORS 758.535.

4.

The ability of a QF to deliver energy to the purchasing utility at a time when it is needed is referred to as its "capacity." The fixed avoided cost rates to be developed by the Commission must therefore include value both for the quantity of energy actually delivered by the QF, and for its capacity.

///

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

5.

The structure of Oregon's mini-PURPA statute mirrors the Federal Energy Regulatory Commission's ("FERC") initial rules implementing PURPA. 18 CFR § 292.304(d)(2019).[1] FERC has stated that allowing a QF to establish a fixed contract price for both its energy and capacity is critical to providing investors with reasonable certainty regarding expected return on investment, thereby allowing QFs to attract project financing. *Allco*, 208 F Supp 3d at 400.

6.

In UM 2000, the Commission has sought to develop an avoided cost rate for an emerging renewable energy technology—solar plus storage facilities. This category of QF combines traditional solar energy facilities with on-site energy storage capabilities. This combination of technologies allows QFs to generate and store electricity during hours when demand for energy is lower, and to deliver that electricity to the purchasing utility when it is most needed. Because of their ability to deliver energy to the purchasing utility when it is most needed, solar plus storage QFs have a higher capacity value than other types of generating resources.

7.

To determine avoided cost rates for capacity for these types of QF facilities, Commission Staff initially proposed four daily "premium peak" hours per month to coincide with four hours of each month in which the purchasing utility has the greatest risk of experiencing an outage—which is referred to as its "loss of load probability." *See* Staff's Straw Proposal for the Phase 0 Interim Solar Plus Storage Rate in UM 2000 at 8, attached to Petition as Exhibit 1. In other words, Staff sought to design a rate that would incentivize these QFs to design and use their storage batteries when utility demand is greatest. As initially proposed, these premium peak hours would not vary over the course of the contract between the QF and the purchasing utility.

[1] At the end of 2020, FERC amended its PURPA rules to no longer require utilities to purchase energy at rates determined at the time a legally enforceable obligation is created. 18 CFR § 292.304(d)(2).

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

Id. This structure would allow a QF to determine with reasonable certainty its expected return on investment—which is the very purpose of requiring a fixed price contract.

8.

Staff thereafter modified its proposal to fall in line with the request from the utilities that the premium peak hours should be updated yearly. Staff's final proposal—the one ultimately adopted by the Commission—allows updates to premium peak hours throughout the life of an executed contract. *See* Order No. 23-179, Appendix A at 4, attached to Petition as Exhibit 2. Under this modified proposal, QFs can no longer predict with reasonable certainty whether they will be able to able to deliver energy during the four premium peak hours of each month (and capture the associated value) because the QFs do not know what those hours will be.

9.

QF developers objected to Staff's proposal to allow premium peak hours to shift, arguing that shifting premium peak hours meant that the capacity rate would not be a "fixed rate" as required under Oregon's mini-PURPA statute. *See* Community Renewable Energy Association, Northwest & Intermountain Power Producers Coalition, and the Renewable Energy Coalition's (the "QF Trade Association") Comments on Staff's Report at 7–8, attached to Petition as Exhibit 3. NewSun also raised this issue with the Commission during a public meeting on May 16, 2023. However, the Commission rejected those legal concerns, arguing that "[a]llowing the hours to vary over the course of the contract will not alter these aspects of the prices established at the time of contracting." *See* Exhibit 2, Appendix A at 6.

10.

The Commission's position is wrong. Under Oregon law, QFs are entitled to sell energy or energy and capacity at fixed avoided costs rates over the course of a contract. ORS 758.525(2). *When* energy is sold is inextricably tied to its price—demand and price rise and fall throughout the day. That fact is especially relevant for solar facilities that can only produce energy during sunlight hours. The QF Trade Associations explained:

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

> Depending on the spread between the energy-plus-capacity prices available during the four premium peak hours and the energy-only price available during all other hours, the impact on the revenue to facility might be material. If the utility has the right to shift the premium peak hours in a manner that increases the number of daylight, solar-producing hours that are premium peak hours, it could undermine the purpose of the battery in the first place and result in the QF installing an unnecessarily oversized battery system.

Exhibit 3 at 8.

11.

A capacity rate with variable hours is, on its face, not a fixed rate. In simple terms, varying the hours over which the premium capacity rates are paid is tantamount to varying the capacity rate itself. The Commission's adoption of a solar plus storage avoided cost rate for capacity that varies over the course of a contract therefore violates PURPA and Oregon law.

12.

The Commission's adoption of a variable capacity rate is also inconsistent with its own rules. ORS 183.484(5)(b)(B). Under OAR 860-029-0120(3):

> "Qualifying facilities have the unilateral right to select a purchase term of up to 20 years for a power purchase agreement. Qualifying facilities electing to sell firm output at fixed-prices have the unilateral right to a fixed-price term of up to 15 years."

Under the "interim" solar plus storage rate, QFs will not have the ability to sell capacity at fixed-prices pursuant to fifteen year contracts in violation of the Commission's own rules.

13.

The solar plus storage rate also violates PURPA because it fails to "encourage" QF development. 16 USC § 824a–3(a). Staff's proposal makes repeated mention of ratepayer protection with little or no discussion of how the rate "encourages" QF development. *See* Exhibit 2, Appendix A at 3 ("Staff recognizes that solar plus storage technology is somewhat novel and aims to provide a reasonable path forward to allow this technology to start delivering benefits to ratepayers ***with minimal risk***."); Exhibit 2, Appendix A at 3 ("Staff will seek to make recommendations that balance the desire for QFs to incorporate storage with ***the risks these***

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

novel price streams may pose to ratepayers."); Exhibit 2, Appendix A at 5 ("Staff shares the utilities' desire to ***mitigate risk to ratepayers***, but believes that the recommended capacity payment structure allows QFs to make economic decisions about project design within a limited range of configurations while ***protecting ratepayers from overpaying***."); and Exhibit 2, Appendix A at 7 ("Staff's approach . . . strikes a reasonable balance in its aim of encouraging QFs to provide more system value through the use of storage technology ***without overburdening ratepayers***."). Providing QFs with a "path forward" and encouraging QFs to "provide more system value" is not the encouragement of QF development as envisioned and required by PURPA. *See Vote Solar v. Montana Department of Public Service Regulation*, 401 Mont 85 (2020) (finding that utility commission decision to reduce standard contract length did not "encourage" QF development). More than just the ability to sell output from solar plus storage QFs, PURPA requires the Commission to enact rules and polices that *encourage* such development. A variable capacity rate for solar plus storage QFs does not "encourage" development because it fails to provide investors with reasonable certainty regarding their potential return on investment. *Allco*, 208 F Supp 3d at 400.

14.

By this Petition, NewSun seeks judicial review of the Final Order and an order from the Court remanding the Final Order to the Commission for further proceedings.

THE PARTES

15.

Petitioner NewSun Energy, LLC is a Delaware limited liability company that invests in and has and manages affiliates engaged in the development of renewable energy and non-emitting generation and capacity facilities, including QFs, in Oregon and throughout the Pacific Northwest. New Sun's principal place of business is in Bend, Oregon.

///

///

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

16.

Respondent Oregon Public Utility Commission is an administrative agency of the State of Oregon, with the power and jurisdiction to supervise and regulate public utilities and telecommunications utilities in this state, and with regulatory authority over the resource procurement of retail electricity providers.

STANDING, JURISDICTION, AND VENUE

17.

NewSun has standing pursuant to ORS 183.480(1), which provides that "any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form." Under ORS 183.310(7), a "party" includes "[e]ach person or agency named by the agency to be a party" and "[a]ny person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result." Under ORS 183.310(8), "'[p]erson' means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency."

18.

NewSun has standing as a party to the agency proceeding at issue because it is an intervenor in UM 2000.

19.

NewSun also is a person adversely affected or aggrieved by the Final Order. As a company that invests in and manages affiliates engaged in the development of solar plus storage QFs that have a right to sell energy or capacity and energy as allowed under Oregon and federal law, NewSun is adversely affected or aggrieved by the Final Order.

///

///

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

20.

The Court has jurisdiction pursuant to ORS 183.484, and NewSun submits this Petition in accordance with the procedure indicated in the Final Order. *See* Exhibit 2 at 1. Judicial review of agency action is available for final orders. ORS 183.480(3). "A final order is neither tentative nor preliminary but is the complete statement of the agency's decision on the matter before it." *Grobovsky v. Bd. Of Med. Examiners*, 213 Or App 136, 143 (2007).

21.

NewSun is aware that the Final Order concerns a rate for solar plus storage facilities that has been styled by the Commission as an "interim" rate, and that further development of a solar plus storage rate is ongoing in Docket UM 2000. However, the Commission has directed its regulated utilities to file solar plus storage tariffs by the end of July 2023, which tariffs will reflect the so-called "interim rate." Furthermore, UM 2000 was opened over four years ago, and further rate development is likely several more years in the making. Consequently, and despite the name, the rates reflected in the Final Order will necessarily *be permanent and final* with respect to any QF contracts executed while the "interim" rate is in place.. Courts must therefore be able to review the legal sufficiency of those permanent contract rates irrespective of the fact that they may be subject to change with respect to future contracts.

22.

Petitioner's petition for review is timely. ORS 183.484(2) provides:

> Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

///

///

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

23.

The Final Order was served on May 18, 2023. Petitioner's petition for review, appealing from the Final Order, was filed within 60 days of that date.

24.

Venue is proper in Deschutes County. ORS 183.484(1) provides "[p]roceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office." NewSun's principal place of business is in Bend, Oregon, where it maintains its offices and its Principal and CEO Jake Stephens maintains his primary office and conducts the business of the company.

FIRST CLAIM FOR RELIEF

(ORS 183.484—Judicial Review of an Order in Other Than a Contested Case)

25.

Petitioner realleges and incorporates by reference paragraphs 1–24 as if fully stated herein.

26.

The Commission's approval of a variable avoided cost rate for capacity payments violates ORS 758.525(2) and PURPA and its implementing rules and orders. ORS 183.484(5)(b)(C).

27.

The Commission's approval of a variable avoided cost rate for capacity payments violates existing Commission rules. OAR 860-029-0120(3); ORS 183.484(5)(b)(B).

28.

The Commission's approval of a variable avoided cost rate for capacity payments is not supported by substantial evidence or reason. ORS 183.484(5)(c).

///

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

29.

Petitioner is entitled to an order from the Court remanding the Final Order to the Commission with instructions to issue a final order that is supported by substantial evidence and reason and that is consistent with ORS 758.525(2), PURPA, and the Commission's rules.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as follows:

1. An Order from the Court remanding the Final Order to the Commission for further proceedings.

2. Such other relief as the Court deems just and proper.

DATED: July 17, 2023.

CABLE HUSTON LLP

s/ Casey M. Nokes

Casey M. Nokes, OSB No. 076641
cnokes@cablehuston.com
Richard G. Lorenz, OSB No. 003086
rlorenz@cablehuston.com
1455 SW Broadway, Suite 1500
Portland, Oregon, 97201
Telephone: (503) 224-3092
Facsimile: (503) 224-3176

Attorneys for Petitioner NewSun Energy LLC

Trial Attorney: Casey M. Nokes

April 6, 2023

UM 2000 Broad Investigation of PURPA

Phase 0 Update

This announcement provides an update to Oregon Public Utility Commission Staff's (Staff) docket strategy for the UM 2000 Public Utility Regulatory Policies Act (PURPA) Investigation into qualifying small power production facilities (QFs). This announcement includes Staff's update to the ongoing Phase 0 schedule, including timelines for comments on Staff's solar plus storage rate straw proposal and an optional workshop to discuss the merits of alternatives/amendments should parties desire. Staff intends to bring the interim solar plus storage rate proposal before the Commission on May 16. Staff invites comments on its attached straw proposal by end of day April 25.

Background

On February 24, 2023, Staff released its update to the UM 2000 proposed process (Staff's Process Proposal and Scope Update) and called for recommended methodology changes or straw proposals for use in identifying an acceptable interim solar plus storage rate. On March 7, 2023, Idaho Power Company (Idaho Power), Pacific Power (PacifiCorp), Portland General Electric Company (PGE), and the Community Renewable Energy Association, Northwest & Intermountain Power Producers Coalition, The Renewable Energy Coalition, and Oregon Solar + Storage Industries Association (collectively the QF parties) submitted initial proposals for establishing an interim solar plus storage standard avoided cost rate. On March 15, 2023, Staff held a workshop to discuss parties' proposals and made progress on several areas of shared understanding. Staff developed a set of draft recommendations based on its review of parties' proposals and the productive workshop discussion. The remainder of this document outlines Staff's draft recommendations and Staff's proposed process for establishing the interim rates.

Next Steps

Phase 0

This updated schedule will serve as notice of a comment period for parties to submit comments or alternatives to Staff's attached straw proposal. Comments are requested to be submitted by end of day, April 25, 2023. Staff may hold an optional workshop, should parties request this, on the afternoon of April 28 to discuss the submitted comments and further refine Staff's straw proposal. Subsequently, Staff will issue a public meeting memo outlining its recommended proposal ahead of the May 16, 2023, public meeting.

UM 2000 Schedule

Staff recognizes that this process may require adjustment over time but presents its recommended schedule in the table below.

Phase 0 Schedule Proposal		
Timeline	**Activity**	**Description**
April 6, 2023	Staff Proposal	Staff issues an interim S+S rate straw proposal.
April 25, 2023	Comments Due	Comments filed on Staff's straw proposal.
April 28, 2023	Optional Workshop	Staff may hold a workshop, as desired, to address any revisions/alternatives proposed by parties.
May 9, 2023	Proposal Posted/Filed	Staff will post a memo outlining its interim S+S rate proposal.

April 6, 2023

Oregon Public Utility Commission

May 16, 2023	PM	Staff will bring its interim S+S rate proposal before the Commission.
July 31, 2023	Interim S+S Rate Filed	Utilities will file their S+S rate for review.
September 21, 2023	PM	Interim S+S rates will be brought before the Commission for approval.

Phase 1 will launch following the conclusion of Phase 0 and is anticipated to take two to three months.

If you have questions on the process or content of this proposal, please contact:

Ryan Bain at 503-559-0380 or ryan.bain@puc.oregon.gov.

Ryan Bain

Ryan Bain
Senior Utility Analyst
Utility Strategy and Integration Division
Public Utility Commission of Oregon
503-559-0380
ryan.bain@puc.oregon.gov

April 6, 2023

Staff's Straw Proposal for the Phase 0 Interim Solar Plus Storage Rate in UM 2000

Oregon Public Utility Commission

Preamble

The interim standard solar plus storage rate for QFs is intended to create a pathway for new QFs to capture the value of capacity provided by combined storage and solar resources as soon as possible during the course of the OPUC's investigation in UM 2000. The interim solar plus storage rate is intended to provide administrative simplicity and ease of calculation, while being aligned with the legal requirements of PURPA. Staff recognizes that solar plus storage technology is somewhat novel but aims to provide an agreeable path forward to allow this technology to start delivering benefits to ratepayers in the very near term while mitigating risk. This expedited approach may not reflect the complexity of pricing methods that will be considered in future phases of UM 2000 or the range of operational opportunities that storage technologies could provide. This simplification may be reflected in the resulting prices, as well.

QF Eligibility Requirements

The standard interim solar plus storage rate will be available to new QFs utilizing solar plus collocated battery storage with a capacity of up to three MW AC measured in accordance with Docket No. AR 631, OAR 860-029-0045(4).[1] The storage facility must only be charged by the on-site solar resource and be collocated with the generating solar resource behind the point of interconnection. Staff does not propose limitations on whether the storage resource is connected on the AC or DC side of the QF's inverter(s), so long as it meets the other criteria. The storage resource must also be of the same capacity as the solar resource. For example, a three MW solar resource must have a three MW storage resource. Finally, the battery may be of no more than four hours in duration.

Staff received widely varied proposals for the capacity ratio eligibility requirement. For example, PGE proposed a range of eligible storage to generation capacity ratios, from 1:4 up to 1:1,[2]

[1] OAR 860-029-0045: Eligibility for Standard Avoided Cost Prices and Purchase Agreements
(1) Solar qualifying facilities with a Nameplate Capacity Rating of 3 MW and less, and all other qualifying facilities with a Nameplate Capacity Rating of 10 MW and less, are eligible for standard avoided cost prices.
(2) All qualifying facilities with a Nameplate Capacity Rating of 10 MW and less are eligible to enter into a standard power purchase agreement.
(4) The determination of Nameplate Capacity Rating for purposes of determining whether a qualifying facility meets the size criteria in sections (1) and (2) is based on the cumulative Nameplate Capacity Rating of the qualifying facility seeking the standard avoided cost prices or power purchase agreement and that of any other Facilities owned by the same person(s) or affiliates(s) located on the same site.

[2] PGE's Comments on Staff's Process and Scoping Update - Pg 4, lines 15-17.

whereas IPC proposed to make QFs with a 1:1[3] ratio eligible for a standard contract as that would best match the modelled proxy resource's capacity contribution.

Staff is leaning toward IPC's proposal, as expressed above, but is receptive to alternatives based on stakeholder feedback. As mentioned previously, Staff understands that further optionality or considerations for different storage/generation capacity ratios could be made. However, Staff believes that for this interim approach a simplified and conservative list of eligibility requirements targeted at what Staff believes are the most common configurations is appropriate.

Premium Peak Hour Determination

Four daily 'premium peak' hours per month will be set by each utility and determined so as to coincide with each month's four hours with the greatest loss of load probability (LOLP). For months with no LOLP, the utility may choose to interpolate the premium peak hours between months with some LOLP probability or may otherwise set the premium peak hours based on expected market prices. Premium peak hours will not vary over the course of the contract.

Capacity Contribution Methodology and Proxy QF Resource Assumptions

To determine the capacity contribution of a representative solar plus storage proxy resource, the respective utility must use a methodology consistent with the methods used in its IRP process. The representative solar plus storage proxy resource should be modelled assuming a three MW solar facility with a three MW storage resource of four-hour duration that is not dispatchable by the utility and unable to engage in grid charging, but is assumed to dispatch whenever possible during the four 'premium peak' hours set each day as determined by the utility. The solar portion of the proxy should match the solar proxy currently approved in avoided cost rates to the extent practicable. The resulting ELCC or alternative capacity contribution value from the proxy resource that provides capacity to the extent possible during the four premium peak hours will then be utilized in a similar manner as in other avoided cost calculations.

Payment Methodology & Dispatch

The solar plus storage QF contracting at the standard rate will be paid for the energy provided based on the approved methodology for other renewable resources. For capacity compensation, these QFs will be paid a volumetric rate ($/MWh) for delivery during the four hours of premium peak pricing per day, upon entering the utility's deficiency period. This will appropriately incentivize discharge of the storage resource during those times of need as determined by the utility and is a reasonable interim mechanism in lieu of direct utility control of dispatch.

Staff understands the importance of maintaining consistent treatment between the capacity

[3] IPC's Comments on S+S Standard Avoided Cost Prices - Pg 5, lines 8-14.

contribution calculation and the capacity compensation framework for all QFs. However, because of the complexity of utility controlled QF storage dispatch and the potential disconnect between a conventionally modelled storage resource and the true capacity contribution of non-utility dispatchable QF storage, Staff finds a deviation from previous practices is necessary for solar plus storage QFs. Staff believes that the best option is to identify the four highest hours of need for each individual utility each month and model the storage assuming it will dispatch during these hours when it can. By compensating these resources for the actual capacity provided during these same four hours, a close approximation of the actual capacity contribution and value is achieved in a relatively simple manner.

The calculation of capacity payment will closely follow existing methodology for other QF types. The capacity contribution value of the solar plus four-hour storage facility to the utility will be compared to the avoided capacity resource used for calculating avoided cost rates. The avoided capacity costs of the avoided resource, in $/kw-year, are proportionately attributed to the solar plus four-hour storage facility based on the relative capacity contribution values of each resource. For example, if the avoided resource's capacity contribution value is 100 percent and the solar plus storage resource provides a 90 percent capacity contribution value, then the solar plus storage resource provides 90 percent of the capacity value of the avoided resource in $/kw-year.

The capacity contribution value for the solar plus four-hour storage facility may be derived from the utility's acknowledged IRP and will otherwise be derived from the effective load carrying capability ("ELCC") of the resource to the utility as modelled by the utility, subject to review by stakeholders and approval by the Commission.

Once the capacity contribution value and avoided capacity costs are determined for the solar plus four-hour storage resource, the volumetric rate may be calculated by uniformly spreading those annual avoided capacity costs across the specific premium peak hours determined by the utility. This final step deviates from existing methodology by spreading the capacity payment across the limited premium peak hours as opposed to spreading the payment over all annual on-peak hours.

Energy payments to the solar plus storage resource will follow existing methodology.

Capacity Availability in Tranches

As the interim standard solar plus storage rate is designed with administrative simplicity and efficiency in mind, and in recognition of the use of novel technology, no new QFs may be contracted under the interim standard rate once a utility has reached fifty MWs of contracted solar plus storage capacity on its system until a review has been completed by the OPUC to investigate the appropriateness of the interim standard solar plus storage rate. This will

effectively create a first fifty MW 'tranche' of capacity available to be met by solar plus storage QFs, and guard against the possibility of a 'land rush' before possible unanticipated effects may be evaluated and corrected through rate design.

Contractual Provisions

Staff believes that this proposal as currently composed would not require any revisions to the existing standard contract. Under the interim solar plus storage rate, the solar plus storage resource will be treated as a solar resource for purposes of the mechanical availability guarantee. Staff invites feedback on any additions or revisions to existing contractual provisions that may be needed.

Initial Implementation

The initial process for approval of the interim solar plus storage rate will not occur in conjunction with the May 1 filing of updated avoided cost rates for other QF types. Pending approval of this proposal by the Commission on May 16, 2023, utilities will file their solar plus storage rates on July 31, 2023. After filing, rates will be reviewed with an opportunity for workshop discussion before being brought before the Commission on September 21 for approval. The July 31 rate submission deadline is intended to allow adequate time for utilities to model the capacity contribution of the proxy resource to their system, should they not already have a relevant value from a recent IRP.

Ongoing Implementation

Updates to the interim solar plus storage rate will be required to be filed annually on May 1 during the pendency of UM 2000. This rate will be in effect and updated annually, as with rates for other QF types, until the conclusion of UM 2000 or until the first tranche of capacity is fully contracted, upon which a review of the rate will be undertaken, and no standard contracts for the rate will be offered during this reevaluation.

ORDER NO. 23-179

ENTERED Mav 18 2023

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2000

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Proposal to Establish an Interim Solar + Storage Standard Avoided Cost Rate.	ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on May 16, 2023, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:

Nolan Moser
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. RA 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 16, 2023

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** **May 17, 2023**

DATE: May 9, 2023

TO: Public Utility Commission

FROM: Ryan Bain

THROUGH: Caroline Moore and Scott Gibbens SIGNED

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 2000)
Proposal to Establish an Interim Solar + Storage Standard Avoided Cost Rate.

STAFF RECOMMENDATION:

Staff recommends that the Commission adopt Staff's proposal for a solar plus storage standard avoided cost rate and direct Portland General Electric (PGE), Idaho Power Company (IPC), and PacifiCorp (PAC) to each file solar plus storage standard avoided cost rates by July 31, 2023, using the methodology and process described in Attachment 1.

DISCUSSION:

Issue

Whether the Oregon Public Utility Commission (Commission) should adopt Staff's proposal and methodology to calculate a standard avoided cost rate for solar plus storage qualifying facilities (QFs) and direct PGE, IPC, and PAC to each file standard avoided cost rates for solar plus storage QFs by July 31, 2023, using the methodology and process described in Attachment 1.

Applicable Rule or Law

18 C.F.R. § 292.304(c) requires the Commission to establish standard rates for purchase from QFs 100 kW and smaller and gives the Commission discretion to

establish standard rates for larger QFs. The Commission currently requires that utilities offer a standard rate to solar QFs three MW and smaller.

18 C.F.R. § 292.304(c)(3)(a) specifies that standard rates may "differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies." Currently, the Commission requires utilities to offer different standard rates based on the capacity contributions to peak of four different resource types. The different resource types are fixed solar, tracking solar, wind, and baseload.

Analysis

Background
On February 14, 2019, the Commission opened Docket No. UM 2000 to tackle PURPA implementation issues related to avoided costs, contracts, interconnection, and planning. In November 2022, Staff initiated the last phase of this investigation focused on avoided cost methodology and planning for QFs. In scoping this last phase, QF stakeholders indicated that establishing a solar plus storage standard avoided cost rate was an important near-term priority. In response, Staff initiated an expedited process to establish an interim solar plus storage standard avoided cost rate. The process began with parties circulating written proposals for the methodological changes needed to establish a solar plus storage standard rate, which was followed by a workshop. Based on this input, Staff circulated an initial proposal for establishing an interim solar plus storage standard avoided cost rate. Parties provided feedback in a workshop and Staff's final recommendations are provided in Attachment 1.

Participants in this process included PGE, IPC, PAC, the Community Renewable Energy Association (CREA), Northwest & Intermountain Power Producers Coalition (NIPPC), The Renewable Energy Coalition (REC), NewSun Energy, and the Oregon Solar + Storage Industries Association (OSSIA).

Staff appreciates the amount of progress made in a short amount of time through collaboration. The remainder of this memorandum summarizes the elements of Staff's final proposal and explains Staff's perspective on key elements that remain contested.

Overview of Staff's Proposal

Staff's proposal for an interim solar plus storage rate relies on the existing methodology for the standalone solar rate with several key changes required to capture the capacity provided by the inclusion of storage. The interim rate is intended to provide administrative simplicity, while sending meaningful signals for QFs to bring more value to the system. Staff recognizes that solar plus storage technology is somewhat novel and aims to provide a reasonable path forward to allow this technology to start delivering benefits to ratepayers with minimal risk. This expedited approach may not reflect the complexity of pricing methods that will be considered in future phases of UM 2000 or the range of operational opportunities that storage technologies could provide. The changes needed to the existing standalone solar methodology proposed by Staff are described in detail in Attachment 1 and summarized below.

Table 1. Summary of Key Changes to Standalone Solar Methodology and Process

Element	Standalone Solar Methods	Solar Plus Storage Methods
QF Eligibility Requirement	Up to 3 MW solar resource	Up to 3 MW solar resource; 4:1 – 1:1 solar to storage ratio; 2 – 4 hour battery
Proxy QF Resource	3 MW solar resource modeled in IRP	3 MW solar resource modeled in IRP with 1:1 storage ratio and 4-hour battery
Capacity Contribution	LOLP/ELCC Model based on expected generation	LOLP/ELCC Model based on expected generation and storage dispatch during premium peak hours when possible
Peak Hours	6 AM – 10 PM Mon-Sat	4 Hours/Day per month for each year of the contract based on LOLP need
Capacity Payment	$/MWh payment for generation in On-peak hours after sufficiency period	$/MWh payment for generation in Premium Peak hours after sufficiency period
Peak Hour Update Process for Existing QFs	None	May file to update Premium Peak hours for new and existing contracts 30 days following IRP or IRP Update acknowledgement
Availability	No cap	50 MW Tranche
Note: Many elements are not listed above because they are not proposed to change from current practices for standalone solar. This includes elements such as the May 1 and post-IRP updates, energy pricing methods, avoided capacity resource identification, and sufficiency/deficiency period delineation. To the extent that parties identify further changes when rates are filed in July 2023, Staff will seek to make recommendations that balance the desire for QFs to incorporate storage with the risks these novel price streams may pose to ratepayers.		

Staff's proposal focuses on compensation for the additional capacity provided by storage in hybrid resources, as well as, associated eligibility and update requirements to strike a reasonable balance. Under Staff's proposal, ratepayers will only pay for capacity provided during four premium peak hours per day. These premium peak hours

are determined by identifying the four highest loss of load probability (LOLP) hours in each month for the respective utility, and are designed to properly signal the QF to dispatch in alignment with the utility's capacity needs. By focusing on four hours a day, and compensating for energy delivered during those same four hours, Staff's proposal addresses issues surrounding dispatchability, accuracy, valuation, and proper compensation. The full details of Staff's recommendations are described in Attachment 1 and summarized below.

- **QF Eligibility Requirements:** QFs up to 3MW of solar capacity with collocated storage with a capacity between 25 and 100 percent of the capacity of the solar resource and two to four hours in duration are eligible.
- **Premium Peak Hour Determination:** Utilities will select four hours each month that represent the hours of greatest capacity need based on the month's LOLP. For months with negligible LOLP, the utility may either interpolate the hours of capacity need between months with some LOLP, or they may determine the premium peak hours based on expected market prices.
- **Capacity Contribution Methodology and Proxy QF Resource Assumptions:** Utilities will model the ELCC of a proxy solar plus storage resource of 3MW solar capacity and 3MW storage capacity of four hour duration.
- **Payment Methodology and Dispatch:** QFs will receive capacity payments under a volumetric rate ($/MWh) for delivering during premium peak hours. Dispatch will be controlled by the QFs and energy payments are made following existing methodology for other resource types.
- **Capacity Available In Tranches:** Except for projects 100 kW or smaller in size, no standard interim contracts are allowed after a utility has reached 50 MW total capacity of solar plus storage QF using interim standard rates until the Commission conducts a review of the interim rate.
- **Contractual Provisions:** Staff's proposal requires no amendments to standard contracts, but recognizes that new definitions and/or otherwise immaterial but germane contractual provisions may need be needed in order to implement Staff's proposal.
- **Initial Implementation:** Staff proposes that each utility file a standard solar plus storage avoided cost rate by July 31, 2023 for approval at a public meeting by September 21, 2023.
- **Ongoing Implementation:** Utilities will update standard solar plus storage rates, including premium peak hours, alongside other standard rates during annual May 1 updates and post-IRP updates. For QFs with existing contracts for solar plus storage interim rates, the utilities may request updates to the premium peak hours following acknowledgement of an IRP or IRP Update. The updates must be justified by IRP analysis.

Outstanding Issues
The path to Staff's proposal was a collaborative process resulting in many areas of agreement among stakeholders. However, parties did not reach agreement on a limited set of important elements. Staff describes these outstanding issues and explains the balance struck by its final recommendations below.

Staff also notes that, initially, PAC and PGE questions whether a reasonable rate could be established on an expedited basis. Following that, both utilities provided methodology proposals and engaged in constructive discussion about reasonable interim methods. For the purposes of this memorandum, Staff focuses on disputed elements of Staff's recommendations and not the establishment of a solar plus storage standard rate generally.

Eligibility/Configuration. Staff recommends the QFs have flexibility to configure their storage within a limited range. The utility parties propose to limit eligibility for the standard solar plus storage rate to QFs with batteries of the same duration and solar to storage ratio as the proposed proxy resource. The utilities argue that limiting QFs to the proxy resource configuration is needed to avoid the risk of overcompensation if the QF's capacity contribution differs from the proxy QF. Staff shares the utilities' desire to mitigate risk to ratepayers, but believes that the recommended capacity payment structure allows QFs to make economic decisions about project design within a limited range of configurations while protecting ratepayers from overpaying. This is because volumetric payments during a limited number of high value hours will provide a reasonably smaller capacity payment for QFs with smaller batteries. The flexibility of Staff's recommendation is also balanced by the 50 MW availability tranche and the ability to disaggregate and adjust premium peak hours during the contract.

Updating Premium Peak Hours. Staff recommends allowing the utility to update the Premium Peak hours for both new and existing QFs following an acknowledged IRP or IRP update. The benefit of energy storage is its ability to shift energy output to the times of greatest need. As the utilities have argued, the times of greatest capacity need are likely to change over the course of a QF's contract as the utility's overall resource mix and demand evolves. CREA, NIPPC, and REC recommend against allowing the premium peak hours to change over the course of the standard contract, citing challenges with uncertain revenue if premium peak hours are moved to key solar generation hours. The QFs assert that allowing the peak hours to change over the course of the contract is inconsistent with the requirement of 18 C.F.R. § 292.304(d) that QFs have the option to provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, based on avoided costs calculated at the time the obligation is incurred.

Staff does not believe the QFs' legal objection is supportable because the price of capacity and energy will be determined at the time of contracting, as required by FERC's regulation. Allowing the hours to vary over the course of the contract will not alter these aspects of the prices established at the time of contracting.

Furthermore, the underlying rationale for creating a specific standard rate for solar plus storage QFs is that the QFs can control the dispatch of the battery. Assuming QFs are in fact able to control the dispatch of the battery, changing the peak hours over the course of the contract does not impact the QFs' ability to earn the contracted prices over the course of the contract. The Commission, Staff, and stakeholders will have the opportunity to examine any proposed changes to premium peak hours and ensure that QFs are not adversely impacted.

Staff is open to QF parties making proposals to limit the extent to which hours can be shifted when the utilities file rate proposals in July. This will allow consideration of the actual premium peak hours proposed, their overlap with daytime hours, and the differential between premium peak and off-peak prices.

50 MW Cap on Capacity under the Interim Rate. As the interim solar plus storage standard rate is designed with administrative simplicity and efficiency in mind, and in recognition of the use of novel technology and capacity payment structures, Staff proposes an initial 50 MW cap per utility on new QFs contracted under the interim standard rate. Once a utility has reached 50 MW of contracted standard rate solar plus storage capacity on its system, the utility will not be required to offer the solar plus storage standard rate until a review has been completed by the Commission. This standard rate availability limit does not apply to QFs up to 100 kW.

This provision is supported by the utility parties and conditionally supported by three of the QF parties, CREA, NIPPC, and REC. OSSIA and NewSun Energy oppose this provision, arguing it is not necessary because any infirmities with the rate can be corrected in the pending investigation of standard rates in future phases of UM 2000.

Given the trade-offs with the expedited process to establish an interim rate, Staff believes the protection of the 50 MW cap is warranted. Staff notes that solar plus storage QFs should not be materially harmed by the cap because they would retain the ability to negotiate a contract that takes into account the value of storage even if the cap is triggered.

Staff believes the potential risks of contracts with 100 kW facilities at the interim solar plus storage rate is not so material as to require application of the 50 MW cap.

Conclusion

Staff's approach to establishing an interim solar plus storage standard avoided cost rate, as outlined in Attachment 1, strikes a reasonable balance in its aim of encouraging QFs to provide more system value through the use of storage technology without overburdening ratepayers. This proposal provides flexibility to interested QF parties of varying configurations, while requiring flexibility on their part in allowing premium peak hour updates to best utilize these novel storage resources.

PROPOSED COMMISSION MOTION:

Adopt Staff's proposal and direct PGE, IPC, and PAC to file standard avoided cost rates by July 31, 2023, using the methodology and process described in Attachment 1.

RA2 – UM 2000

Attachment 1 - Staff's Updated Proposal for the Phase 0 Interim Standard Solar Plus Storage Rate in UM 2000

QF Eligibility Requirements

The standard interim solar plus storage rate will be available to new QFs utilizing solar plus collocated battery storage with a capacity of up to three MW AC measured in accordance with Docket No. AR 631, OAR 860-029-0045(4).[1] The storage facility must only be charged by the on-site solar resource and be collocated with the generating solar resource behind the point of interconnection. Staff does not propose limitations on whether the storage resource is connected on the AC or DC side of the QF's inverter(s), so long as it meets the other criteria. The storage resource must also be no less than 25 percent and no greater than 100 percent of the capacity of the generating solar resource. For example, a three MW solar resource may have anywhere between a 0.75 MW to a three MW storage resource. Finally, the battery may be of no less than two hours and no more than four hours in duration.

Premium Peak Hour Determination

Four daily 'premium peak' hours per month will be set by each utility and determined so as to coincide with each month's four hours with the greatest loss of load probability (LOLP). For months with no LOLP, the utility may choose to interpolate the premium peak hours between months with some LOLP probability or may otherwise set the premium peak hours based on expected market prices. Following acknowledgement of an Integrated Resource Plan (IRP), or IRP Update, premium peak hours may be updated. These updates will apply to new and existing QFs on the interim standard rate. While changing the premium peak hours will in no way alter the capacity payment available to a contracted QF, these updates will keep the QF aligned with the utility's greatest capacity needs. Additionally, the four premium peak hours per day do not have

[1] OAR 860-029-0045: Eligibility for Standard Avoided Cost Prices and Purchase Agreements
(1) Solar qualifying facilities with a Nameplate Capacity Rating of 3 MW and less, and all other qualifying facilities with a Nameplate Capacity Rating of 10 MW and less, are eligible for standard avoided cost prices.
(2) All qualifying facilities with a Nameplate Capacity Rating of 10 MW and less are eligible to enter into a standard power purchase agreement.
(4) The determination of Nameplate Capacity Rating for purposes of determining whether a qualifying facility meets the size criteria in sections (1) and (2) is based on the cumulative Nameplate Capacity Rating of the qualifying facility seeking the standard avoided cost prices or power purchase agreement and that of any other Facilities owned by the same person(s) or affiliates(s) located on the same site.

to be contiguous, but they may not constitute more than two separate periods of premium peak hours per day.

Capacity Contribution Methodology and Proxy QF Resource Assumptions

To determine the capacity contribution of a representative solar plus storage proxy resource, the respective utility must use a methodology consistent with the methods used in its IRP. The representative solar plus storage proxy resource should be modelled assuming a three MW solar facility with a three MW storage resource of four-hour duration that is not dispatchable by the utility and unable to engage in grid charging, but is assumed to dispatch whenever possible during the four 'premium peak' hours set each month as determined by the utility. The solar portion of the proxy should match the solar proxy currently approved in avoided cost rates to the extent practicable. The resulting effective load carrying capability (ELCC) or alternative capacity contribution value from the proxy resource that provides capacity to the extent possible during the four premium peak hours will then be utilized in a similar manner as in other avoided cost calculations.

Payment Methodology and Dispatch

The solar plus storage QF contracting at the standard rate will be paid for the energy provided based on the approved methodology for other renewable resources. For capacity compensation, these QFs will be paid a volumetric rate ($/MWh) for delivery during the four hours of premium peak pricing per day, except on Sundays, upon entering the utility's deficiency period. This will appropriately incentivize discharge of the storage resource during those times of need as determined by the utility and is a reasonable interim mechanism in lieu of direct utility control of dispatch.

Staff understands the importance of maintaining consistent treatment between the capacity contribution calculation and the capacity compensation framework for all QFs. However, because of the complexity of utility controlled QF storage dispatch and the potential disconnect between a conventionally modelled storage resource and the true capacity contribution of non-utility dispatchable QF storage, Staff finds a deviation from previous practices is necessary for solar plus storage QFs. Staff believes that the best option is to identify the four highest hours of need for each individual utility each month and model the storage assuming it will dispatch during these hours when it can. By compensating these resources for the actual capacity provided during these same four

hours, a close approximation of the actual capacity contribution and value is achieved in a relatively simple manner.

The calculation of capacity payment will closely follow existing methodology for other QF types. The capacity contribution value of the solar plus four-hour storage facility to the utility will be compared to the avoided capacity resource used for calculating avoided cost rates. The avoided capacity costs of the avoided resource, in $/kw-year, are proportionately attributed to the solar plus four-hour storage facility based on the relative capacity contribution values of each resource. For example, if the avoided resource's capacity contribution value is 100 percent and the solar plus storage resource provides a 90 percent capacity contribution value, then the solar plus storage resource provides 90 percent of the capacity value of the avoided resource in $/kw-year.

The capacity contribution value for the solar plus four-hour storage facility may be derived from the utility's acknowledged IRP and will otherwise be derived from the ELCC of the resource to the utility as modelled by the utility, subject to review by stakeholders and approval by the Commission.

Once the capacity contribution value and avoided capacity costs are determined for the solar plus four-hour storage resource, the volumetric rate may be calculated by uniformly spreading those annual avoided capacity costs across the specific premium peak hours determined by the utility. This final step deviates from existing methodology by spreading the capacity payment across the limited premium peak hours as opposed to spreading the payment over all annual on-peak hours.

Energy payments to the solar plus storage resource will follow existing methodology. Additionally, negotiated solar plus storage contracts must be priced by adjusting the pricing in the interim solar plus storage standard contract, as is performed for other QF resource types and in following with OPUC Order No. 07-360.

Capacity Availability in Tranches

As the interim solar plus storage standard rate is designed with administrative simplicity and efficiency in mind, and in recognition of the use of novel technology, no new QFs may be contracted under the interim standard rate once a utility has reached fifty MWs of contracted standard rate solar plus storage capacity on its system until a review has been completed by the Commission to investigate the appropriateness of the interim

standard solar plus storage rate. This will effectively create a first fifty MW 'tranche' of capacity available to be met by solar plus storage QFs on the interim standard contract, and guard against the possibility of a 'land rush' before possible unanticipated effects may be evaluated and corrected through rate design. A QF that is otherwise eligible for the interim rate standard contract may still negotiate a non-standard contract if the cap has been reached and the interim rate is under review. Projects 100kW or smaller in size will be guaranteed an interim solar plus storage standard rate contract during a review period triggered upon reaching the cap.

Contractual Provisions

Staff believes that this proposal as currently composed would not require any material revisions to existing standard contracts. PAC commented that new definitions and some amendments to existing definitions in their standard contract may be needed in order to implement the Commission's decision, and this could include additional amendments resulting from the Commission's final order in Docket AR 631. As such, Staff invites the utilities to request revisions to their standard contracts in their July 31 filings, should the utilities determine that they are needed. Under the interim solar plus storage standard rate, the solar plus storage resource will be treated as a solar resource for purposes of the mechanical availability guarantee.

Initial Implementation

The initial process for approval of the interim solar plus storage rate will not occur in conjunction with the May 1 filing of updated avoided cost rates for other QF types. Pending approval of this proposal by the Commission at the May 16, 2023 Public Meeting, utilities will file their solar plus storage rates on July 31, 2023. After filing, rates will be reviewed with an opportunity for comment and workshop discussion before being brought before the Commission on September 21 for approval. The July 31 rate submission deadline is intended to allow adequate time for utilities to model the capacity contribution of the proxy resource to their system, should they not already have a relevant value from a recent IRP.

Ongoing Implementation

Updates to the interim solar plus storage standard rate avoided costs will be required to be filed annually on May 1 during the pendency of UM 2000, as well as after the

acknowledgement of an IRP. This rate will be in effect and updated annually, as with rates for other QF types, until the conclusion of UM 2000 or until the first tranche of capacity is fully contracted, upon which a review of the rate will be undertaken, and no standard contracts for the interim rate will be offered during this reevaluation to projects above 100 kW.

Utilities can propose updates to the premium peak hours for existing contracts following an acknowledged IRP or IRP Update if the modification in peak hours is justified by the analysis of the IRP or IRP Update.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2000

Phase 0

In the Matter of Public Utility Commission of Oregon, Investigation into PURPA Implementation	COMMUNITY RENEWABLE ENERGY ASSOCIATION, NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION, AND THE RENEWABLE ENERGY COALITION'S COMMENTS ON STAFF'S REPORT

I. INTRODUCTION AND SUMMARY

The Community Renewable Energy Association, the Northwest & Intermountain Power Producers Coalition, and the Renewable Energy Coalition's (collectively the "QF Trade Associations") hereby respectfully submit these comments on the Oregon Public Utility Commission ("OPUC" or the "Commission") Staff's Report and Proposal for an Interim Solar-plus-Storage Standard Avoided Cost Rate ("Staff's Proposal") emailed to stakeholders on May 9, 2023. The QF Trade Associations appreciate the efforts of Staff and other stakeholders in expeditiously and collaboratively developing an interim solar-plus-storage standard rate for small qualifying facilities ("QFs") under the Public Utility Policies Act of 1978 ("PURPA"). Although there was opposition to development of a standard solar-plus-storage rate at the outset, the structure of Staff's Proposal—in particular its reliance on an enhanced volumetric capacity rate paid during premium peak hours—ultimately reflects the consensus of the QF parties and the utilities.

As explained below, the QF Trade Associations largely support Staff's Proposal, but provide a clarification of their position with respect to the proposed 50-megawatt ("MW") cap and an alternative proposal with respect to whether the four daily premium peak hours may be changed during the term of a power purchase agreement ("PPA") as follows:

- 50-MW Cap: In addition to the conditions on the cap discussed in Staff's Proposal, the Commission should take steps to ensure that if the cap is reached, there is no protracted period without a standard solar-plus-storage rate for QFs otherwise eligible for standard solar rates.
- Fixed Versus Variable Premium Peak Hours: As an alternative to Staff's Proposal, the Commission should require the utilities to offer two rate options: (i) first, a standard rate under with the four premium peak hours remain fixed for the contract term, and (ii) second, a standard rate that reflects the increased value to the utility of the ability to update four premium peak hours during the contract term.

II. COMMENTS

A. The QF Trade Associations Largely Support Staff's Straw Proposal as a Reasonable Interim Rate.

Staff's Proposal includes the common elements for a solar-plus-storage rate proposed by QF Trade Associations and the utilities. Specifically, Staff's Straw Proposal for an interim solar-plus-storage standard rate utilizes a volumetric rate that allocates capacity payments to the "premium peak" hours of greatest capacity need to incent charging and discharging of the battery

energy storage system consistent with the purchasing utility's peak capacity needs.[1] Staff's Proposal allows each utility to propose its own unique premium peak hours and capacity contribution value for the solar-plus-storage QFs.[2] The standard rate would be available to AC-connected or DC-connected solar-plus-storage QFs with power production capacity (as measured at the point of interconnection) of 3 MW or less, and which utilize two-hour to four-hour battery system and 1:4 through 1:1 storage-to-solar ratio.[3]

The QF Trade Associations agree with Staff's general framework and eligibility for the standard rate. Payment for the capacity value as a volumetric rate reasonably ensures that the QF is only paid for discharging the battery and delivering capacity consistent with the rate design, while also avoiding the additional complexity of developing contract provisions enabling a fixed, dollar-per-kW-month capacity payment for the interim rate.[4] The QF Trade Associations also agree with Staff that the volumetric payment mechanism justifies using the four-hour, 1:1 solar-plus-storage facility as the proxy used for development of the capacity contribution value and potential capacity dollars to be spread over the four, daily premium peak hours. A QF with an undersized system relative to the proxy (e.g., a QF with a two-hour battery and a 1:4 design)

---

1 Staff's Proposal, pp. 9-10.
2 Staff's Proposal, pp. 8-9.
3 Staff's Proposal, p. 8.
4 *See, e.g., See In re Idaho Power's Petition to Determine the Project Eligibility Cap for Published Avoided Cost Rates and the Appropriate Contract Length for Energy Storage Qualifying Facilities*, IPUC Case No. IPC-E-20-02, Order No. 34913 at 6 (Feb. 5, 2021) (explaining: "By identifying its Peak Hours and Premium Peak Hours, the utility sends a price signal to energy storage QFs to dispatch energy at the times the utility most needs the energy. Because energy storage QFs can alter their output to respond to price signals, identifying and pricing high-value hours accordingly can encourage QF development and help the utility avoid higher-cost resources, benefiting ratepayers.")

would be paid proportionally lower rates by virtue of the fact that it cannot deliver as much energy during the premium peak hours and would thus be paid less of the overall capacity dollars available to a QF designed with the same exact configuration as the proxy. The utilities have expressed concern with expanding the eligibility to any solar-plus-storage system that does not match the proxy's configuration, but the perceived imprecision is no different than any other category of standard rates. At the end of the day, the volumetric rate design ensures that any QF unable to deliver energy during all of the targeted premium peak hours will not be paid the full capacity value attributed to the solar-plus-storage proxy.

Staff explains that solar-plus-storage QFs with capacity in excess of 3 MW, or different configurations than authorized for the standard rate, can still negotiate a non-standard rate.[5] The QF Trade Associations appreciate this clarification and support its inclusion in the Commission's order. Such clarification is necessary to ensure that creation of this standard rate for certain small QFs meeting specific criteria is not misinterpreted to prevent use of non-standard rates by storage QFs that are ineligible for the standard rate due to nameplate capacity, the storage configuration and technology used, or a circumstance where the 50-MW cap is reached. The non-standard rate option would also allow larger QFs to negotiate a different compensation structure and any necessary contract provisions, such as a payment for capacity through a dollar per kilowatt-month price rather than a dollar per kilowatt-hour price used in the interim standard rate option.

---

5 Staff's Proposal, pp. 10-11.

B. The QF Trade Associations Recommend an Additional Condition on Staff's Proposed 50-MW Cap.

In an effort to address concerns raised by the utilities, Staff's Proposal includes a 50-MW cap.[6] This proposal was made in response to the utilities' concern with a "land rush" of small QFs locking in the interim rate, and the possibility of unanticipated effects, before a potentially more complex rate mechanism can be developed through lengthy adjudication in later phases of this docket. Staff proposes that, if reached, such cap could be lifted or otherwise become inapplicable after a review has been completed by the OPUC.[7]

While the QF Trade Associations do not generally support the use of caps, they do not oppose Staff's proposed cap under the unique circumstances here to facilitate near-term implementation of the interim standard rate provided that certain additional clarifications are provided. First, as Staff's Proposal clarifies, the 50-MW cap per utility applies only to the interim *standard* rate, and any solar-plus-storage QF that would have been eligible for the standard rate will remain eligible to negotiate a non-standard rate if the cap is reached.[8] Second, Staff's Proposal clarifies that QFs with power production capacity of 100 kilowatts ("kW") or less should continue to be eligible for the standard solar-plus-storage rate even if the 50-MW cap is reached for any utility.[9] The QF Trade Association agree those are two necessary conditions on any cap under applicable law.[10]

---

6 Staff's Proposal, pp. 6, 10-11.
7 Staff's Proposal, p. 6.
8 Staff's Proposal, p. 11.
9 Staff's Proposal, p. 11.
10 *See Hydrodynamics Inc.*, 146 FERC ¶ 61,193, P 34 (Mar. 20, 2014) (holding 50-MW cap on wind QFs with capacity in excess of 100 kW violated PURPA because no PURPA-compliant fixed-rate option was offered to such wind QFs after cap was reached); 18 CFR § 292.304(c)

However, Staff's Proposal omits a critical third condition recommended by the QF Trade Associations. Specifically, the QF Trade Associations' non-opposition to the cap is conditioned on the Commission clarifying that it will not allow the affected utility to delay in proposing revisions, if any, to address any concerns it has with the interim standard rate, and the Commission will take actions to prevent protracted periods with no standard rate option for solar-plus-storage QFs up to 3 MW in capacity (or the otherwise established eligibility cap for standard solar rates). This condition is important because experience suggests it could be years before the larger UM 2000 case is completed with final rates implementing a non-interim standard rate for solar-plus-storage QFs. Allowing the standard solar-plus-storage rates to become unavailable, potentially for many months or even years, for otherwise eligible QFs just because 50 MW of capacity is contracted would not be in keeping with Oregon's clean energy goals. Thus, action should be taken to ensure that if the cap is reached, it will be promptly lifted unless some concrete problem with the interim rate is identified and cannot be promptly resolved.

C. The QF Trade Associations Recommend that Eligible QFs Should Be Allowed to Elect Fixed or Variable Premium Peak Hours in a PPA.

The Commission should provide additional flexibility with respect to the question of whether the purchasing utility may update the premium peak hours applicable to QF's executed PPA. Specifically, as an alternative to Staff's Proposal, the Commission should require the

---

(standard rates required for QFs with capacity of 100 kW or less); *Franklin Energy Storage One, LLC v. Kjellander*, Case No.: 1:18-cv-00236-REB, 2020 U.S. Dist. LEXIS 8892 at **43-47 (D. Id., Jan. 17, 2020) (holding Idaho PUC violated PURPA by categorizing solar-plus-storage QFs as solar QFs and limiting them to standard rate options for solar QFs).

utilities to offer two rate options: (i) first, a standard rate under which the four premium peak hours remain fixed for the contract term, and (ii) second, a standard rate that reflects the increased value to the utility of the ability to update the four premium peak hours during the contract term.

Staff's initial straw proposal included a provision that the four premium peak hours would remain fixed during the term of the PPA.[11] Additionally, this was one of the disputed issues with respect to the standard solar-plus-storage rate adopted by the Idaho Public Utilities Commission ("IPUC"), and the IPUC ultimately required that Idaho Power's premium peak hours remain fixed for the term of the QF's PPA.[12] Staff's Proposal here, however, adopts the utilities' recommendation that the four premium peak hours be allowed to be updated during the term of the PPA.[13] Unlike the utilities, who would like to update the premium peak hours every year, Staff would only allow the update to occur after an acknowledged Integrated Resource Plan ("IRP") or IRP Update.[14]

---

11 Staff's Phase 0 Process Update and Straw Proposal, Docket No. UM 2000, p. 4 (April 6, 2023) ("Premium peak hours will not vary over the course of the contract.")

12 *See* IPUC Case No. IPC-E-20-02, Order No. 34913, p. 7 ("We find it fair and just that updates to the Peak Hours and Premium Peak Hours only apply to new and renewal contracts. When a QF enters a contract, its Peak Hours and Premium Peak Hours will be known for the duration of the contract. While locking-in the Peak Hours and Premium Peak Hours for the term of the contract may impact the ability to discretely target specific hours for energy storage QF capacity contribution, it does provide QFs certainty regarding their commitments during the term of the contract.").

13 Staff's Proposal, pp. 5-6.

14 *Id.*

As Staff notes, there are concerns that allowing the premium peak period to be updated during the contract term may mean the rate is not a fixed rate under PURPA. That was also a consideration in the IPUC order.[15]

However, in addition to that legal concern, there are additional practical uncertainties that would have to be considered and that could frustrate financing of the facility. Changes to the premium peak hours could impact the overall revenue paid to the facility. Depending on the spread between the energy-plus-capacity prices available during the four premium peak hours and the energy-only price available during all other hours, the impact on the revenue to facility might be material. If the utility has the right to shift the premium peak hours in a manner that increases the number of daylight, solar-producing hours that are premium peak hours, it could undermine the purpose of the battery in the first place and result in the QF installing an unnecessarily oversized battery system. At this time, it is not possible to adequately analyze the issue because no rates have been proposed by the utilities and the policy is being addressed in the abstract. However, these complicated possibilities will need to be carefully analyzed in financing any QF that has a contract allowing the utility to update the premium peak hours.

Given the uncertainties at this stage of the proceedings, the QF Trade Associations recommend the Commission should require the utilities to offer two rate options: (i) first, a standard rate under which the four premium peak hours remain fixed for the contract term, and (ii) second, a standard rate that reflects the increased value to the utility of the ability to update

---

[15] *See* IPUC Case No. IPC-E-20-02, Order No. 34913, p. 4 (explaining that IPUC Staff stated "that the Company's proposal to update Peak Hours and Premium Peak Hours during a contract may run afoul of 18 C.F.R. § 292.304(d)(2), because it might not allow a QF to establish the rates it will receive at the time the contract is signed").

the four premium peak hours during the contract term. The utilities should be required to do so at least in their compliance filings to provide parties and the Commission with a better understanding of the value that exists with the ability to update the four premium peak hours. If the value is substantial, individual QFs could elect to enter into a contract giving the utility the ability to update the premium peak hours, but if the value is insubstantial, it may make more sense for a QF to proceed with the certainty of the fixed premium peak hours from the outset.

Relatedly, the QF Trade Associations agree with the aspect of Staff's Proposal that would allow for up to two premium peak periods per day. This would allow the utility to split the four premium peak hours into a morning peak and evening peak in certain months, such as the winter months (e.g., two morning hours and two evening hours of premium peak). This added flexibility should provide substantial value to the utility over a requirement for four consecutive premium peak hours every day. The QF Trade Associations understood that the only utility to comment on the issue at the last workshop agreed that this limitation to two periods per day would be reasonable. However, allowing more than two premium peak periods within the day could impose significant costs on the facility and would not be appropriate within the standard rate framework.

III. CONCLUSION

The QF Trade Associations recommend approval of Staff's Proposal for the Interim Standard Solar-plus-Storage Rate subject to the clarifications in these comments.

Dated this 12th day of May 2023.

Respectfully submitted,

Richardson Adams, PLLC

Gregory M. Adams
515 N. 27th Street
Boise, ID 83702
Telephone: (208) 938-2236
Fax: (208) 938-7904
greg@richardsonadams.com

Of Attorneys for the Community Renewable Energy Association

Sanger Law, PC

Irion Sanger
Ellie Hardwick
Sanger Law, PC
4031 SE Hawthorne Blvd.
Portland, Oregon 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Northwest & Intermountain Power Producers Coalition and the Renewable Energy Coalition