

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 526

In the Matter of a)
)
Rulemaking to Update Division 029 Rules.) **ORDER**

DISPOSITION: EXISTING RULE AMENDED; NEW RULE ADOPTED

On April 15, 2008, the Public Utility Commission of Oregon (Commission) filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. Notice was provided on April 15, 2008, to certain legislators as specified in ORS 183.335(1)(d) and to all interested persons on the service lists maintained pursuant to OAR 860-011-0001.

Notice of the rulemaking was published in the May 2008 *Oregon Bulletin*. The Commission held a public hearing on May 29, 2008, and interested persons were given until that date to file written comments. Written comments were filed by PacifiCorp, dba Pacific Power (Pacific Power), Portland General Electric Company (PGE), and Sorenson Engineering, Inc. (Sorenson). Comments were received in person at the public hearing from Commission Staff (Staff) and Roush Hydro, Inc. (Roush).

DISCUSSION AND COMMENTS

The proposed amendment to OAR 860-029-0001 (Amended Rule) is necessary to comply with Senate Bill 838, Section 27(4), signed into law June 6, 2007. Proposed OAR 860-029-0100 (New Rule) is intended to clarify the scope of complaint proceedings relating to negotiated Qualifying Facility (QF) power purchase agreements. The New Rule establishes a dispute resolution process and identifies the responsibilities of those involved in the complaint. Following the guidelines set forth in Order No. 07-360, the resultant process is intended to reduce the time and cost of resolving disputes for QFs, utilities, and the Commission.

Pacific Power submitted comments addressing the Commission’s proposed New Rule on May 21, 2008. Its filing suggested changes to clarify and simplify the Commission’s proposed New Rule.

On May 28, 2008, PGE submitted comments fully supporting Pacific Power's editorial suggestions.

In its comments at the public hearing, Staff also supported Pacific Power's suggested changes to the New Rule. Staff also favored the inclusion of a short phrase in the final sentence of Pacific Power's Proposed OAR 860-029-0100(9). In relevant part, Staff preferred the final sentence to read, "Such procedures may include, but are not limited to, hosting a technical . . ."

Sorenson submitted comments on May 29, 2008, that in essence contain one substantive suggestion: the proposed dispute resolution process should be available when eligibility, performance, or implementation issues arise in the standard (non-negotiated) power purchase agreement context.

Roush's comments at the public hearing reflected a related concern, presumably shared by similarly situated QFs of ten megawatts or less: the dispute resolution process should be made available to the negotiation of interconnection agreements, since such an agreement is a condition precedent to signing a standard contract with a public utility.

RESOLUTION

Having heard no comments to the contrary, and understanding that the amendment brings the rule into compliance with SB 838, the Commission agrees that the Amended Rule should be adopted.

As to the New Rule, the Commission finds Pacific Power's editorial suggestions, as amended above by Staff, to be reasonable. The final version of the New Rule incorporating these modifications, included as Attachment A, should be adopted.

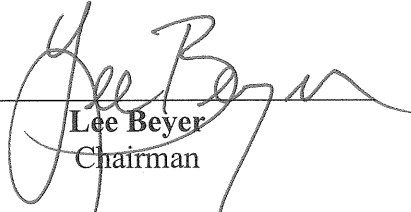
The Commission takes note of the concerns raised by both Sorenson and Roush, appreciating that the issues raised are highly relevant to the development of a full, fair, and integrated Division 29 dispute resolution process. Nonetheless, we find these concerns outside the scope of AR 526. Either the imminent rulemaking dealing with further Division 29 changes, or the ongoing docket concerning interconnection issues between QFs and public utilities, AR 521, is a more suitable context in which to address these matters.

ORDER


IT IS ORDERED that:

1. As set forth in Appendix A, the amendment to Oregon Administrative Rule 860-029-0001 is adopted.
2. As set forth in Appendix A, new Oregon Administrative Rule 860-029-0100 is adopted.
3. The amended rule and new rule will become effective upon filing with the Secretary of State.

Made, entered, and effective JUL 07 2008.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

860-029-0001**Purpose**

The purpose of this Division is to implement ORS 758.505 through 758.555 and to implement regulations relating to electric utilities and qualifying cogeneration and small power production facilities as provided under Section 210 of the federal Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617 (16 USC 824a-3).

~~The rules contained in this Division do not apply to public utilities that satisfy their public purpose obligations under ORS 757.612.~~

[Publications: ~~The p~~Publication(s) ~~referred to or incorporated by~~ referenced in this rule are available for review from ~~the office of~~ the Public Utility Commission.]

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 756.040, 757.612 & 758.505 through 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016); PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073)

860-029-0100**Resolution of Disputes for Proposed Negotiated Power Purchase Agreements**

(1) This rule applies to a complaint, filed pursuant to ORS 756.500, regarding the negotiation of a Qualifying Facility power purchase agreement. These provisions supplement the generally applicable hearing procedures contained in OAR chapter 860, divisions 011 through 014.

(2) Before a complaint is filed with the Commission, the Qualifying Facility must have followed the procedures set forth in the applicable public utility's tariff regarding negotiated power purchase agreements.

(3) At any time after sixty calendar days from the date a Qualifying Facility has provided written comments to the public utility regarding the public utility's draft power purchase agreement, the Qualifying Facility may file a complaint with the Commission asking for adjudication of any unresolved terms and conditions of its proposed agreement with the public utility.

(4) A Qualifying Facility filing a complaint under this rule is the "complainant." The public utility against whom the complaint is filed is the "respondent."

(5) The complaint must contain each of the following, as described by the complainant:

(a) A statement that the Qualifying Facility provided written comments to the utility on the draft power purchase agreement at least 60 calendar days before the filing of the complaint.

(b) A statement of the attempts at negotiation or other methods of informal dispute resolution undertaken by the negotiating parties.

(c) A statement of the specific unresolved terms and conditions.

- (d) A description of each party's position on the unresolved provisions.**
- (e) A proposed agreement encompassing all matters, including those on which the parties have reached agreement and those that are in dispute.**
- (6) Along with the complaint, the Qualifying Facility must submit written direct testimony that includes all information upon which the complainant bases its claims.**
- (7) Within 10 calendar days of service of the complaint, the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions. The respondent may also identify and present any additional issues for which the respondent seeks resolution.**
- (8) Along with its response the respondent must submit written direct testimony that includes all information upon which the respondent relies to support its position.**
- (9) An assigned Administrative Law Judge (ALJ) will conduct a conference with the parties to identify disputed issues, to establish a procedural schedule and to adopt procedures for the complaint proceeding. To accommodate the need for flexibility and to implement the intent of this streamlined complaint process, the ALJ retains the discretion to adopt appropriate procedures provided such procedures are fair, treat the parties equitably, and substantially comply with this rule. Such procedures may include, but are not limited to, hosting a technical workshop, holding a hearing, or submitting written comments.**
- (10) Only the counterparties to the agreement will have full party status. The ALJ may confer with members of the Commission Staff for technical assistance.**
- (11) After the hearing, or other procedures set forth in section (9), if the Commission determines that a term or provision of the proposed agreement is not just, fair, and reasonable, it may reject the proposed term or provision and may prescribe a just and reasonable term or provision. The Commission's review is limited to the open issues identified in the complaint and in the response.**
- (12) Within 15 business days after the Commission issues its final order, the public utility must prepare a final version of the power purchase agreement complying with the Commission decision and serve it upon the Qualifying Facility. Within 10 days of service of the final power purchase agreement, the Qualifying Facility and the public utility may sign and file the agreement with the Commission, may request clarification whether the agreement terms comply with the Commission order, or may apply for rehearing or reconsideration of the order. The terms and conditions in the power purchase agreement will not be final and binding until the agreement is executed by both parties.**
- (13) The provisions of any power purchase agreement approved pursuant to this rule apply only to the parties to the agreement and are not to be considered as precedent for any other power purchase agreement negotiation or adjudication.**

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: ORS 756.040 & 756.500 through 756.575

Hist.: NEW