ORDER NO. 11 089

ENTERED MAR 17 2011

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1505

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Solar Photovoltaic Program Draft.	ORDER

DISPOSITION: PROGRAM CHANGES ADOPTED

I. INTRODUCTION

On October 14, 2010, the Public Utility Commission of Oregon (Commission) opened this docket to receive comments on its legislative report on the Solar Photovoltaic Pilot Program (Program). During the initial phase of the proceeding the Commission received recommendations from various stakeholders for Program improvements.

In its report to the legislature the Commission summarized these recommendations as follows:

- Reduce the Volumetric Incentive Rate (VIR) more than 10 percent before the next enrollment period
- Conduct research on non-winning applicants
- Change the application process and current online system
- Require regular reports on capacity installed
- Report annually rather than every two years
- Deploy the entire capacity over a 2-year period, rather than 4-year period
- Eliminate the bidding approach for large scale systems
- Change the insurance requirement
- Broaden the goals of the pilot program to include job creation, local economic impact, and environmental impact
- Adopt an "avoided cost" based approach to set rates consistent with the recent Federal Energy Regulatory Commission order

The Commission opened this second phase of the proceedings to provide a forum to further consider such recommendations.

II. PROCEDURAL HISTORY

A workshop was held on January 20, 2011, with special emphasis on recommendations that could be implemented before the next open enrollment date (April 1, 2011). Following the workshop, a prehearing conference was held and dates set for the filing of opening comments (February 11, 2011) and reply comments (February 28, 2011). A workshop with the Commissioners was set for February 18, 2011.

Opening comments were filed by Commission Staff; Portland General Electric Company (PGE); and PacifiCorp, dba Pacific Power (Pacific Power) ((filing jointly) (Joint Utilities)); Idaho Power Company (Idaho Power); Industrial Customers of Northwest Utilities (ICNU); the Oregon Department of Energy (ODOE) and the Energy Trust of Oregon (ODOE/ETO); Oregonians for Renewable Energy Policy (OREP); Renewable Northwest Project (RNP); the Citizens' Utility Board of Oregon (CUB); the Oregon Solar Energy Industries Association(OSEIA), SolarCity, and Tanner Creek Energy (Joint Parties); RNP, CUB, and Tanner Creek Energy (Combined Parties); and intervenor Dr. Dave Sullivan (Sullivan).

Reply comments were filed by Staff, Joint Utilities, Idaho Power, OREP, Joint Parties, Sullivan, and Solar Energy Solutions (SES). After reply comments were filed, RNP filed a motion requesting leave to file supplemental comments in reply to proposals first made by Staff and Joint Utilities in their reply comments. RNP's motion was granted. Supplemental comments were filed by Sullivan, SES, ODOE, RNP, OSEIA, SolarCity, and Tanner Creek Energy (Indicated Parties), and OREP.

III. DISCUSSION

A. Background

The Commission originally adopted program policies and rules in companion proceedings (dockets UM 1452 and AR 538). As part of the ongoing process the Commission resets the Volumetric Incentive Rate (VIR) (if necessary) at a Public Meeting held before the next scheduled open enrollment date. At this time the Public Meeting is set for March 17, 2011; the next open enrollment date is April 1, 2011.[1]

As noted above, the determination of the VIR is an issue that was raised in conjunction with the report to the legislature. Parties have expressed the view that the VIR has been set too high. The level of the VIR will be decided at the Public Meeting on March 17, 2011. Accordingly, the determination of the VIR is not within the scope of this phase of this proceeding.

From the comments of the parties, and based on the views expressed at the workshop, there has emerged somewhat of a consensus that the Commission should address program issues in two stages; more narrowly in relation to April 1st, more broadly in relation to October 1st. As stated by the Joint Utilities:

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[1] The open enrollment dates are staged at six-month intervals.

> [A]ny major change in program design should accommodate the time and resources necessary to allow the utilities to implement programmatic changes. * * * [A] delay of the next allocation window may undermine the stability of the program and create confusion in the marketplace.[2]

We adopt this approach in this decision. We note that Idaho Power is discussed separately.

B. Issues

We address four issues. First, we summarize the parties' arguments, followed by our resolution, of issues related to the April 1, 2011 allocation window. We then address issues related to the October 1, 2011 window. Third, we address general issues related to the Program. Finally, we address issues related to Idaho Power's participation in the Program.

1. April 1st Enrollment Period

a. Allocation Method

A key issue in this phase of the proceeding is the question of the fairness of the first-come, first-served method used to allocate capacity in the small-scale and mid-scale markets. The fairness issue has arisen because the available capacity has "sold out" immediately, leaving out an unknown (but apparently large) number of unsuccessful applicants. That result also is cited as evidence that the VIR has been set "too high."

i. Commission Staff

Staff initially proposed that the Commission implement a lottery as the solution to address the fairness issues associated with the first-come, first-served method. To facilitate the implementation of the lottery, Staff proposed to postpone the start of the enrollment period to May 1, 2011.

In its reply comments Staff proposed that the implementation of the lottery be deferred to October 1, 2011. Staff proposed that the April 1 enrollment proceed as scheduled.

ii. Joint Utilities

The Joint Utilities state that they have devised means to "slow down" the first-come, first-served allocation to increase fairness. They have declined to be specific regarding how their corrective measures will limit possible "gaming."

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[2] Pacific Power's and PGE's Joint Reply Comments at 2 (Feb 28, 2011).

iii. ODOE/ETO

ODOE/ETO recommend that the Commission refrain from significant program changes for the April 1 enrollment period.

iv. OREP

OREP supports changing the enrollment process as soon as possible, suggesting the October 1 enrollment date.

v. Joint Parties

Joint Parties recommend no delay of the April 1 enrollment date, using the first-come, first-served method.

vi. Intervenor Sullivan

Intervenor Sullivan states that a lottery would address current fairness problems, but will not help balance supply and demand, won't lower overall costs, and will introduce new fairness issues.

vii. SES

SES agrees that the first-come, first-served method "is not a good way to distribute the allocation." It suggests that "perhaps" some kind of project or kilowatt cap per company of a lottery system would be a better solution.

Resolution

The Commission adopts the final Staff position that the Commission retain the April 1 enrollment period (rather than a May 1 enrollment period) and use the modified first-come, first-served method to allocate the available capacity for that enrollment period. We agree with all parties that it would be too costly and too disruptive to change the enrollment period and allocation method for the upcoming enrollment. As discussed elsewhere, we do adopt the lottery method for the PGE and Pacific Power service areas for the October 1 enrollment period.

b. Capacity Allocation

i. Staff

Although Staff proposes that the Commission maintain the current schedule, Staff recommends that the amount of the capacity to be made available April 1 for the small and medium-scale markets be reduced to 25 percent of the amount currently scheduled. The remaining amount would be moved to the October 1 enrollment window.

Staff believes adoption of its proposal will mitigate concerns if the Commission adopts "only" a 10 percent reduction in the VIR at its March 17, 2011 Public Meeting.

ii. Joint Utilities

The Joint Utilities propose that the Commission limit the amount of small and medium capacity available for the April 1 enrollment period to 50 percent of the amount now scheduled, with the remaining amount to be offered October 1.

iii. Sullivan

Intervenor Sullivan proposes that the capacity allocations for PGE and Pacific Power each be reduced by 50 percent for the remainder of the program. His proposed capacity reduction reflects his view that the Program costs will exceed the statutory rate cap of 0.25 percent unless corrective measures are taken.

Sullivan opposes Staff's proposed capacity reduction, arguing that a greater VIR reduction should be adopted instead.

iv. OREP

OREP opposes Staff's proposed capacity reduction. According to OREP, there is no data to support the claim that the VIRs are "inappropriately high." To reduce capacity by 75 percent with no data is arbitrary and capricious. The loss of 75 percent of program capacity will lead to financial hardship for solar installers.

v. Indicated Parties

Indicated Parties believe that a sudden capacity reduction would have similar or even more severe consequences than a greater than 10 percent adjustment to the VIR. They argue that a drastic adjustment on short notice would greatly reduce public and industry confidence in the program. A severe reduction would be an inappropriate reactionary measure that does little to resolve past mistakes, further harms the Program, and will have significant negative effects on the Oregon solar industry.

Indicated Parties further argue that the capacity reduction would interfere with the test of the effectiveness of the utility measures to slow down the application process. For the method to be properly tested, it should be tested in an allocation period that has an amount of capacity similar to the amount made available in previous allocations.

vi. SES

SES argues that to reduce capacity abruptly by 75 percent would be a "death-blow" to the residential solar industry. The industry needs stability and deserves transparency.

vii. ODOE

ODOE does not support the proposed capacity reduction. ODOE believes that decisions of this nature warrant disclosure and discussion to allow all parties to provide constructive input.

Resolution

The Commission considered Staff's (and the utilities') proposed capacity reduction (and a 10 percent VIR reduction) at the March 17, 2011 Public Meeting, as an alternative to Staff's proposed 30 percent VIR reduction. The alternatives proposed by Staff were intended to limit the rate impact of the pilot program, either by reducing the VIR or reducing the capacity available under the higher VIR. Based on all factors, as discussed in a companion order in docket UM 1452, the Commission adopted a 20 percent VIR reduction. With that rate reduction, the Commission adopts no changes to available capacity on April 1.

c. 25 percent Rate Cap

The Commission declines to adopt a rate cap. We do not know the ultimate cost of the Program. We continue to revise the VIR rate and rely on competitive bidding to generate the rates for larger systems. Over time, this will result in lower steady-state feed-in tariff rates and lower overall program costs while still providing maximum information for the policy questions posed for this Program

d. Utility Survey

As noted above, one of the issues identified in the report to the legislature relates to "research on non-winning applicants." Several approaches to address this issue have been proposed.

i. Joint Utilities

The Joint Utilities propose to post a survey on their websites. The survey would solicit information regarding project location and size. The survey would be available for 48 hours following the close of the reservations.

ii. OREP

OREP proposes that the utilities hold their enrollment window open for 24 hours, and that each applicant submit information relating to the amount of capacity requested, the anticipated system cost, the name of the anticipated installer, and the zip code for each system to be installed. OREP believes that this information would be useful in setting future rates.

iii. Joint Parties

Joint Parties support "a more robust and comprehensive data collection method" than proposed by the Joint Utilities, but find their proposal "an improvement" that can be implemented in the remaining time.

iv. SES

SES supports more data collection generally. SES "strongly supports" keeping the enrollment period open for a full 24 hours.

v. OREP

OREP argues that a voluntary survey does not rise to the task at hand. The survey results will not be trustworthy. The proposed surveys will raise more questions than they answer.

Resolution

The Commission adopts the Joint Utilities' proposal for a web survey that participants can take. The proposed survey is a serviceable approach to gaining useful information about program demand.

The proposed 24 hour survey is rejected. In the instance where the allocation is filled within minutes or hours, it would seriously mislead participants who apply after the allocation has been filled.

e. *Medium-Scale Competitive Bidding*

i. Staff

Staff proposed that the medium-scale market be bifurcated, with half the capacity to be made available through competitive bidding (and half by first-come, first-served). Staff believes this approach would improve the cost-effectiveness of the Program and reduce the perverse incentive that only allows the VIR to be paid up to the annual usage of the metered customer.

ii. Joint Utilities

The Joint Utilities do not support splitting the medium-scale allotment into two different reservation processes during the same reservation window. Alternatively, they indicate they "could" support a bid option for medium – scale projects if the reservation process alternates between windows.

iii. OREP

OREP states that bifurcating the medium-scale class would add complexity and administrative costs. Competitive bidding may lead to unintended consequences and may put some geographic areas of the state at a disadvantage, due to the amounts of relative "sunfall." OREP urges the Commission to exercise its authority over rate setting.

iv. Sullivan

Intervenor Sullivan proposes that competitive bidding be used to determine prices for medium-scale (and small-scale) projects. He proposes that a US Treasury Bill-type auction be conducted.

Resolution

With one modification, we adopt Staff's proposal to allocate medium-scale system capacity on a 50-50 basis using the VIR rates and competitive bidding. For larger systems, competitive bidding can be an effective means for identifying acceptable rates while keeping costs down. We adopt the Joint Utilities' proposal for timing – competitive bidding for the medium-scale systems will occur during the October 1 enrollment period.

f. Disclosure of Bid Prices

i. Staff

Staff recommends that the Commission require disclosure of all bid information. Staff states its preference towards public disclosure, in view of the Commission's status as a state agency.

ii. Joint Utilities

The Joint Utilities state that, if the Commission believes that release of the winning bid prices will better facilitate Program goals, they recommend that language be added to each company's request for bids and contracts stating that the bid prices may be publicly available. They recommend that bidder names and addresses be treated as confidential, "on the basis that this is information of a personal nature, and exempt from disclosure under the Oregon Public Records Act."

iii. ODOE/ETO

ODOE/ETO state that average price information is not sufficient to analyze the effectiveness of the Program. Average price fails to provide the benchmark necessary to evaluate the Program's effectiveness at reducing system costs.

iv. OREP

OREP supports public disclosure of bid prices.

v. Joint Parties

The Joint Parties support public disclosure of bid prices. They state that average prices do not give a clear signal of current market conditions or trends.

Resolution

Staff and a number of the parties recommend that bid prices be disclosed. We adopt the recommendation. We find that disclosing bid prices provides useful program information and will not cause competitive bidding problems.

g. Meter Charge

i. OREP

OREP argues that the meter charge should be reduced. According to OREP, the $20 monthly charge is a burden for small-scale systems.

ii. Staff

Staff believes the meter charge should be retained. According to Staff, the charge is consistent with current net metering and qualifying facility treatment, and Program participants should not be exempt from the charge.

Resolution

The Commission does not adopt the recommendation to eliminate the meter charge. The VIR rate is a cost-based rate that includes the cost of the meter.

h. Insurance Requirement

i. OREP

OREP recommends that the insurance requirement be removed. According to OREP, the Commission should simplify Program participation and reduce "soft costs."

ii. Joint Utilities

The Joint Utilities state that the insurance requirement is reasonable and no change is necessary. They state that they have added language that removes the requirement to name the utility as an additional insured, and that customers no longer experience difficulty acquiring insurance.

They compare the pilot program to net metering, where insurance is not required. They state that a statute limits liability for net metering, and a similar statute would be needed to limit liability for the feed-in tariff program.

Resolution

The Commission agrees with the arguments made by the Joint Utilities. The Commission does not adopt the recommendation to eliminate the insurance requirement.

2. *October 1st Enrollment Period*

a. *Capacity Allocation Method*

i. Staff

As stated above, Staff proposes that a lottery be adopted as the capacity allocation method used for the October 1 enrollment period. Staff recommends the following methodology for the lottery:

- 24-hour application window
- 24-hour period for determining if the applications are complete and working with applicants within this time frame to correct any errors or incomplete applications
- Use of a random selection process (Excel random selection function or other software package analytical tool); and
- Internal audit or review of the results, with information made available to Staff

Staff notes that the utilities have a problem holding deposits for a lottery, and will continue to work with the utilities to arrive at a solution to that problem.

ii. Joint Utilities

According to the Joint Utilities, a lottery would favor the larger installers who will submit more applications. Even with a lottery there still will remain questions of fairness. The conditions of the lottery must first be thoroughly understood by all parties.

iii. ODOE/ETO

ODOE/ETO propose a one-day lottery as the way to provide a sense of a more equitable distribution of winning projects.

iv. OREP

OREP supports a change to the enrollment process, effective October 1.

OREP does not oppose a lottery.

v. Joint Parties

Joint Parties believe that a lottery is a superficial solution to the underlying supply and demand issues. They oppose a lottery for small-scale systems.

vi. Combined Parties

Combined Parties suggest the Commission consider a lottery for medium-scale projects, beginning October 1, with the utilities accepting applications for a 12-hour period. For small-scale systems they recommend that the Commission continue to use first-come, first-served.

vii. Sullivan

As noted above, Sullivan states that a lottery would address current fairness problems, but will not help balance supply and demand, won't lower overall costs, and will introduce new fairness issues.

As an alternative, Sullivan proposes that the Commission allocate capacity *via* an auction. He offers the US Treasury Bill bidding process as an example of an auction method that would work for small-scale and medium-sized projects. He further proposes that a uniform statewide- rate be established.

Resolution

For the October 1 enrollment period and beyond, the Commission adopts the use of a lottery system – rather than a first-come, first-served approach – for small-size and medium-size systems eligible for a VIR rate in the service areas of PGE and Pacific Power. The lottery process addresses both the unfairness issues parties have raised about the first-come, first-served method and it allows for a deeper understanding about the demand for the program.

In any enrollment, if the eligible capacity does not sell out through the lottery, the remaining capacity will be made available on a first-come, first-served basis.

The use of a lottery system raises a number of implementation details. We direct Staff to convene a workshop(s) to identify all necessary rule changes or Commission direction to implement lottery systems in sufficient time for the October 1 enrollment period.

b. Volumetric Incentive Rate Determination Process

i. Staff

Staff proposes to work with all parties to manage the VIR determination process so that Staff can make its October 1 rate proposal no less than two months before the rates would go into effect (August 1, 2011).

ii. Joint Utilities

The Joint Utilities recommend that Staff initiate a review of the VIR to keep the rate more in line with current market costs.

iii. Joint Parties

Joint Parties recommend the Commission take into account the most current cost data for the VIR rate determination. They propose a formula for a VIR reduction, depending on the enrollment.

Resolution

Staff proposes a two-month window of notice of VIR rates to provide Program participants ample time to adjust to those rates. We concur with the need to provide ample time for notice of rates for upcoming enrollment periods.

As part of the workshops described above, we ask Staff and the parties to address two issues related to notice and its relationship with the automatic rate adjustment mechanism: (1) How much notice of rates should be provided, and (2) If the notice requirement creates an inconsistency with the existing automatic rate adjustment mechanism, how should we address that inconsistency. We direct Staff to provide recommendations in ample time for the October 1 enrollment period.

c. Medium-Size Capacity Reallocation

i. Combined Parties

The Combined Parties propose that, prior to October 1, the Commission rate action to mitigate a supply/demand imbalance in medium-scale projects. They propose that the Commission redistribute capacity from the small-scale category to the medium-scale size. They claim that the reallocation would lower overall costs and provide more opportunity for solar development.

To effectuate their proposal they suggest that the Commission redistribute the small-scale capacity allocation for 2013 into the remaining medium-scale system allocation for the enrollment period from October 1, 2011 through October 1, 2012. The Program would be compressed from 4 years to 3 years.

ii. Staff

Staff does not support the reallocation of small-scale capacity to the medium-scale market.

iii. Joint Utilities

The Joint Utilities do not oppose the proposed capacity reallocation.

iv. SES

SES opposes any reallocation of small-scale capacity to the medium-scale market.

Resolution

The Commission declines to adopt the recommendation to change the capacity allocation between small-scale and medium-scale market segments at this time. We see no basis to make such a change.

3. General Issues

a. Quarterly Enrollment

Intervenor Sullivan proposes quarterly enrollments, instead of the semi-annual enrollment now scheduled. He believes that quarterly enrollments would result in more efficient rate determinations.

Staff and Joint Utilities oppose quarterly enrollment. They argue that it would be administratively burdensome and would increase administrative costs.

The Commission declines to adopt the recommendation to go to quarterly enrollment periods. We concur with Staff and the Joint Utilities that such a change would be administratively burdensome and would increase administrative costs without compensating benefits.

b. Annual Reports

The Commission declines to adopt the recommendation to write annual legislative reports, consistent with existing law.

c. Resource Value

OREP recommends that the utility "resource values" be calculated. The Commission agrees with Staff's approach to work with utilities to calculate the resource values and report them in 2013 legislative report.

d. QF (Qualifying Facility) Prices

OREP proposes that the Commission eliminate its net metering approach for VIR-eligible systems and adopt an "avoided-cost" approach. The Oregon Department of Justice advises us that that would require a law change. The Commission sees no reason to change its approach.

e. Solar Industry Development Information and Policies

OREP and other parties have recommended that the Commission acquire and provide more information about the solar industry and solar incentives in general and address the Legislative directive to consider regulatory policies designed to increase the use of solar photovoltaic energy systems, make them more affordable, reduce the cost of incentive programs to utility customers, and promote the development of the solar industry in Oregon. The Commission will continue to work with the Oregon Department of Energy and the Energy Trust to provide general information for the public. Further, as stated in our legislative report, the Commission is not yet ready to identify regulatory policies that may be adopted to further facilitate solar photovoltaic energy generation. The Commission will continue to consider this issue as additional information is obtained from the pilot programs and other programs.

4. Idaho Power Enrollment Period and Allocation Method

Idaho Power's next open enrollment period will be its last.

The Commission declines to close the program. The Commission adopts the Staff recommendation to postpone the final enrollment period until October 1, 2011.

In addition, the Commission makes no change to the first-come, first-served method for the Idaho Power service area. Given the projected costs of the Idaho Power program, the Commission does not want to add any additional administrative costs for a one-time enrollment.

IV. ORDER

IT IS ORDERED that Portland General Electric Company, PacifiCorp, dba Pacific Power, and Idaho Power Company, must file all tariffs and applications necessary to implement the provisions of this order.

Made, entered, and effective MAR 17 2011.

John Savage
Commissioner

Susan K. Ackerman
Commissioner

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 Court of Appeals in compliance with ORS 183.480 through 183.484.