

ORDER NO. 23-316

ENTERED Aug 24 2023

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2299

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY; PACIFICORP dba PACIFIC
POWER; AND IDAHO POWER
COMPANY,

Joint Utilities Application for Approval of
Proposed Schedules and Standard Power
Purchase Agreement for Qualifying
Facilities up to 10 MW.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on August 22, 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. RA2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 22, 2023

REGULAR	X	CONSENT	EFFECTIVE DATE	N/A
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DATE: August 15, 2023

TO: Public Utility Commission

FROM: Charles Lockwood

THROUGH: Caroline Moore **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION:
(Docket No. UM 2299)
Application for Standard Power Purchase Agreement for Qualifying
Facilities up to 10 MW.

STAFF RECOMMENDATION:

Staff recommends that the Oregon Public Utility Commission (Commission) deny Portland General Electric, Pacific Power, and Idaho Power's (Joint Utilities) request to use the proposed standard power purchase agreement (PPA) for Qualifying Facilities (QFs) under 10 MW on an interim basis pending the Commission's final review of the draft standard PPA. To the extent use of the currently approved standard contracts are inconsistent with rules adopted under Order Nos. 23-152 and 23-214, Staff recommends the Commission waive application of the inconsistent rules until otherwise ordered by the Commission.

DISCUSSION:

Issue

Whether the Commissions should approve the Joint Utilities' request to use its recently filed draft standard PPA for QFs under 10 MW on an interim basis, starting 30 days after filing, pending the outcome of Commission's comprehensive review of the recently filed standard PPA and new utility schedules implementing new rules adopted in Docket No. AR 631.

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Applicable Rule

ORS 756.060 provides the following:

The Public Utility Commission may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission and may adopt and publish reasonable and proper rules to govern proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and telecommunications utilities and other parties before the commission.

ORS 758.535(2)(a) specifies that “the terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall...[b]e established by rule by the commission if the purchase is by a public utility.

The Commission adopted OAR Chapter 860, Division 29 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).

OAR 860-029-0005 allows the Commission upon request or its own motion to waive any of the Division 29 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

Analysis

Background

In Docket No. AR 631, the Commission issued an order on April 25, 2023, adopting new and revised rules for QF standard contracts. The Commission directed the utilities subject to these rules to initiate a proceeding before the Commission in which they file a revised standard form contract no later than 30 days from the date of the order. The Joint Utilities subsequently sought and received two 30-day extensions to file the revised contract and ultimately filed a revised standard contract on July 24, 2023.

On July 23, 2023, the Joint Utilities filed jointly seeking interim approval of a single standard form of contract for QFs under 10 MW rather than submitting updates to the multiple contracts currently used per utility. Further, the Joint Utilities proposed that the Commission approve this contract for interim use within 30 days of the filing (August 23, 2023), followed by a comprehensive review to approve the revised form of contract on a permanent basis.

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At the time of filing, PacifiCorp had received three requests for standard PPAs from QFs, that the Company has not yet executed contracts with. PacifiCorp therefore requests the Commission allow the pending QFs contracts to be treated as legacy contracts under the Commission's rules in effect prior to the AR 631 rule changes and in the form of the current Commission-approved standard PPAs, as long as the PPAs are executed within 90 days after the new rules take effect.

On August 3, 2023, Staff filed a process announcement to the docket stating Staff's intention to recommend that the Commission not approve the use of the new form of standard contract on an interim basis, as well as proposing an expedited review process designed to obtain a Commission decision on the contract by December 12, 2023. Staff's schedule will allow a comprehensive review of the proposed contract and provide ample opportunity for stakeholder engagement.

Staff Review

Staff appreciates the Joint Utilities' efforts to streamline and simplify standard contracting and future contract updates. After reviewing the Joint Utilities' application and understanding the extent of the changes proposed, Staff did not identify new provisions that are sufficiently urgent enough to justify requiring QFs to enter into contracts with terms that are not fully understood or vetted.

Staff finds the better option is to reject the Joint Utilities' interim proposal and expediate the review process. Staff therefore asks the Commission to temporarily waive compliance with rules that impose requirements that are inconsistent with the currently approved form of standard contracts while the Commission reviews the draft proposed PPA and utility schedules implementing the new rules. OAR 860-029-0005(3). By waiving compliance, the Commission would allow the Joint Utilities and QFs to continue utilizing the currently approved contracts while Staff and parties review the utilities' filings. In addition, by waiving compliance, the Commission would allow PacifiCorp's three previously received PPA requests to be executed on a currently effective form of standard PPA.

In the event the Commission chooses to grant the Joint Utilities' request to allow use the recently-filed standard PPA on an interim basis pending the Commission's final review, Staff recommends that the standard form of PPA include a provision that the PPA will be updated to incorporate the decisions of the Commission, and that the QF has the option to terminate the contract after the Commission decision on the final contract.

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Contract Review Process

Based on discussions with interested parties, Staff proposes the following updated process, which is designed to obtain a Commission decision on the contract by December 12, 2023.

- August 22, 2023: Public Meeting decision on whether to approve or allow time for more process.
- September 5, 2023: Workshop where Joint Utilities present changes and answer questions.
- October 3, 2023: Staff and Stakeholders provide written comments.
- October 17, 2023: Utilities provide reply comments.
- November 14, 2023: Workshop for parties to discuss issues from comments.
- November 21, 2023: Parties provide final written comments.
- December 12, 2023: Public Meeting to adopt the single standard contract.

Conclusion

Staff appreciates the Joint Utilities' efforts to standardize QF contracting and streamline the content for compliance review. Staff does not however recommend approving the proposed standard contract until after all parties have an opportunity to review and fully understand the updated terms.

PROPOSED COMMISSION MOTION:

Deny the Joint Utilities' request for use of the standard PPA for QFs under 10 MW on an interim basis pending the Commission's final review and waive compliance with the new standard contract rules derived from Docket No. AR 631 that are inconsistent with the current forms of standard PPA, pending an expedited, comprehensive review.

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