

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 631

In the Matter of Rulemaking to Address
Procedures, Terms, and Conditions
Associated with Qualifying Facilities (QF)
Standard Contracts

RESPONSE COMMENTS OF THE
COMMUNITY RENEWABLE ENERGY
ASSOCIATION AND RENEWABLE
ENERGY COALITION REGARDING
RULES FOR CREDITWORTHINESS
EVALUATION

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”) and the Renewable Energy Coalition (the “Coalition”) submit these limited comments in response to the Joint Utilities’ argument that the QF Trade Associations’ proposal on the creditworthiness issue contains vague and undefined terms for a qualifying facility (“QF”) owner’s “net position” and the utility’s “reasonable creditworthiness evaluation.”¹ As explained below, a public entity’s “net position” is a well-established term in accounting, and despite the Joint Utilities’ claim, it could easily be imported into the Public Utility Commission of Oregon’s (“Commission” or “OPUC”) rules to allow public entities to avoid having to post costly liquid security when they are clearly not the “judgment proof” projects with which the Joint Utilities claim to be concerned. Additionally, the

¹ CREA and REC have previously submitted joint comments with the Northwest & Intermountain Power Producers Coalition (“NIPPC”), and all three groups have been referred to collectively in prior comments as the QF Trade Associations. NIPPC was not able to review and approve these comments in time to authorize their joinder in the submission before the public hearing on January 12, 2023, and therefore these comments are only joined by CREA and REC at this time.

other allegedly vague term cited by the Joint Utilities—the utility’s own “reasonable creditworthiness evaluation”—is not vague or materially different from one of the Joint Utilities’ own proposed options for demonstration of creditworthiness.

II. RESPONSE COMMENTS

A. Background on Creditworthiness Issue

As previously discussed, the QF Trade Associations’ proposal is that the Commission should include objective criteria for the creditworthiness evaluation of a QF in the administrative rules. Creditworthiness has new significance because the Commission appears ready to adopt the Joint Utilities’ proposal to require any QF deemed non-creditworthy to meet costly liquid security requirements. Given this new significance, the criteria should utilize metrics that are transparent, objective, and relevant to the small QF. The options to demonstrate creditworthiness should not be limited to just (i) an S&P or Moody’s rating, or failing that, (ii) the purchasing utility’s proprietary credit evaluation.² Specifically, the QF Trade Associations have proposed that the Commission should provide the small QFs with at least the following options to demonstrate creditworthiness: (i) a reasonable purchasing utility credit evaluation, *or* (ii) audited financial statements or internal financial statements prepared for the QF’s tax return that

² See Comments of CREA, NIPPC, and the Coalition on Amendments to Rules Dated November 23, 2022 at 7-11 (Dec. 16, 2022).

demonstrate a “net position” equal to at least one year of projected revenue under the power purchase agreement (“PPA”), *or* (iii) a suitable Dun and Bradstreet rating.³

In response, among other arguments, the Joint Utilities have now claimed that the proposal to rely on a “net position” equal to at least one year of projected revenue under the PPA or “reasonable” credit evaluation by the purchasing utility should be rejected on the ground that those proposals rely on “vague, undefined terms” and will “likely lead to increased litigation.”⁴ The Joint Utilities’ argument is mistaken, and it should not preclude the Commission from adopting the QF Trade Associations’ proposal.

These limited written comments address only the perceived vagueness of these two options included in our proposal—which would benefit from further written response and clarification—and do not concede any points related to creditworthiness or security alleged by the Joint Utilities and unaddressed in these limited comments.

B. “Net Position” Equal to One Year’s Revenue Under the PPA

First, the term “net position” is not vague, and it is surprising that the Joint Utilities assert this commonly used accounting term is unknown to them. However, we provide further explanation below to remove whatever ambiguity might exist.

As noted in prior comments, the “net position” option is intended to be an option that would be utilized by public entities, which use that metric in their accounting practices to

³ See Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules at 40-41 (Sept. 16, 2022); Comments of CREA, NIPPC, and the Coalition on Amendments to Rules Dated November 23, 2022 at 7-11 (Dec. 16, 2022).

⁴ Joint Utilities’ Comments Regarding the Group 2 Draft Rules at 42 (Dec. 16, 2022).

demonstrate their net financial position.⁵ “Total Net Position” is defined, generally, by the Governmental Accounting Standards Board (“GASB”) as the difference between (a) assets and deferred outflows of resources and (b) liabilities and deferred inflows of resources.⁶ This measure of “net position” is required to be conducted by public entities in Oregon, such as municipalities and irrigation districts that might seek to enter into a small QF PPA. For example, the Oregon Secretary of State Audits Division’s administrative rules include the following minimum standard for audits: “An individual schedule of receipts/revenues, expenditures/expenses, and changes in fund balances/*net position*, budget and actual, must be prepared for each fund of any municipal corporation for which budgets are legally required.”⁷ More generally, the calculation of net position is also used by other agencies in Oregon, and throughout the country, to assess the financial position of a public entity. For example, the federal government requires the Oregon Department Environmental Quality (“DEQ”) to use the same “net position” evaluation under the GASB standard as a measure of the

⁵ Comments of CREA, NIPPC, and the Coalition on Amendments to Rules Dated November 23, 2022 at 8 (Dec. 16, 2022) (stating: “The QF Trade Associations understand that the use of ‘net position’ is a term of art specific to public entities, and that is why it is included in the second option set forth above.”).

⁶ See Statement No. 63 of the Governmental Accounting Standards Board: *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position* (June 2011), available at: <https://gasb.org/page/PageContent?pageId=/standards-guidance/pronouncements/summary--statement-no-63.html&isStaticPage=true>.

⁷ OAR 162-010-0130 (emphasis added).

equity of DEQ’s revolving fund used to issue grants for projects to reduce pollution under the Clean Water Act.⁸

If the Joint Utilities truly believe that “net position” is too vague, it could easily be defined in the administrative rules consistent with the definition from the GASB cited above and used in other agencies’ regulations. Specifically, the Commission’s creditworthiness rules could define “net position” as “the difference between (a) assets and deferred outflows of resources and (b) liabilities and deferred inflows of resources, as calculated in accordance with the standards of the Governmental Accounting Standards Board.” That definition would be used in the option described above as one avenue to demonstrate creditworthiness: *i.e.*, that the QF supply audited financial statements or internal financial statements prepared for the QF’s tax return that demonstrate a “net position” equal to at least one year of projected revenue under the PPA.

We continue to be concerned that the Joint Utilities are not truly interested in developing creditworthiness criteria that work for public entities. The Joint Utilities even go so far in their latest comments as to assert that developing creditworthiness requirements specific to irrigation

⁸ See Oregon DEQ, *Clean Water State Revolving Fund Rule Revisions 2017*, DEQ 18-2017, Lexis No. 56-12 Or. Admin. R. Bull. 12010106, at Appendix 3, p. 14 (Nov. 6, 2017) (federal guidance document, stating: “The current valuation of the fund must be a representation of the equity of the Clean Water State Revolving Fund (‘CWSRF’) that properly takes into account its assets and liabilities. This valuation needs to be verifiable and consistent across the States; therefore, this calculation must be based on the most recent audited financial statements of the CWSRF and must reflect the ‘Total Net Position,’ which is defined by the GASB as the difference between (a) assets and deferred outflows of resources and (b) liabilities and deferred inflows of resources.”).

districts and public entities is “inappropriate.”⁹ This latest assertion highlights a fundamental disagreement. CREA and REC submit that designing a standard contract framework that not only allows but *encourages* irrigation districts and public entities to develop small-scale renewable energy projects is an important aspect of this rulemaking. Such entities should not be subjected to potentially arbitrary outcomes from proprietary and non-transparent modeling conducted by the utilities. Nor should they be required to waste public funds on liquid security when they are clearly not judgment proof and can satisfy the objectively reasonable credit metrics proposed by the QF Trade Associations.

C. The Purchasing Utility’s “Reasonable” Credit Evaluation

Second, the Joint Utilities’ claim not to understand the proposal to use the purchasing utility’s own reasonable credit evaluation is even more perplexing. The specific rule language proposed by the QF Trade Associations on this option was that if the QF does not meet one of the other objective options, the QF must demonstrate it “otherwise meets the creditworthiness requirements used by the public utility, which requirements shall be commercially reasonable.”¹⁰

The QF Trade Associations’ proposal to use the purchasing utility’s own “reasonable credit evaluation” is, in effect, the same as one of the two options contained in the Joint Utilities’ own proposal for the creditworthiness evaluation. Specifically, the Joint Utilities propose that

⁹ Joint Utilities’ Response Comments to the QF Trade Association’ and OSSIA’s Comments at 3 (Jan. 11, 2023).

¹⁰ Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules, Attachment at 23-24 (Sept. 16, 2022) (mark-up to proposed rules OAR 860-029-0120(16) & (17)).

QFs that do not have S&P or Moody’s ratings must supply financial information supporting an equivalent rating through the purchasing utility’s “internal process review and utilizing a proprietary credit scoring model. . . .”¹¹ Thus, all parties agree that one way for a QF to be deemed creditworthy should be the purchasing utility’s own internal review process—if the purchasing utility is satisfied that the QF is creditworthy, then the other criteria are not necessary. The QF Trade Associations added the qualifier that the utility’s internal review must be “reasonable,” but aside from that, it does not appear there is any disagreement on that option. The parties differ on whether that utility-controlled, proprietary, internal review, or S&P and Moody’s, should be the only two options. As noted above, the QF Trade Associations recommend additional non-proprietary options that have relevance to small QFs, including also a “net position” equal to at least one year of projected revenue under the PPA or a suitable Dun and Bradstreet rating.

III. CONCLUSION

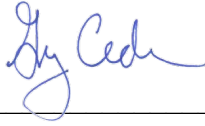
In sum, the Joint Utilities’ claim that the QF Trade Associations’ proposals are vague or would not be understood by someone versed in accounting and credit evaluations is incorrect and provides no basis to ignore the QF Trade Associations’ reasonable proposal. The QF Trade Associations look forward to addressing additional points and concerns related to creditworthiness evaluations and security requirements at the rulemaking hearing.

¹¹ Joint Utilities’ Comments Regarding the Group 2 Draft Rules at 42 (Dec. 16, 2022) (Joint Utilities’ proposed rule language).

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Respectfully submitted,

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