

**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

COMMENTS OF THE COMMUNITY
RENEWABLE ENERGY ASSOCIATION,
NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION, AND
RENEWABLE ENERGY COALITION ON
AMENDMENTS TO RULES DATED
NOVEMBER 23, 2022

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”), the Northwest & Intermountain Power Producers Coalition (“NIPPC”), and the Renewable Energy Coalition (the “Coalition”) (collectively the “QF Trade Associations”) respectfully submit these Comments on the amendments to the proposed rules published with the Secretary of State on November 23, 2022 (hereafter “November 23rd Amendment”). The QF Trade Associations continue to support all of the recommendations made in our September 16, 2022 Group 2 Comments and the revisions to the proposed rules attached thereto.¹ A select handful of important revisions proposed by the QF Trade Associations appear to have been made in the November 23rd Amendment, and the resulting proposal is certainly improved as a result.

¹ See generally Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules (Sept. 16, 2022).

However, the vast majority of the QF Trade Associations’ substantive edits were not adopted, and we continue to strongly urge the Commission to implement the remaining revisions we have proposed to ensure the Commission is encouraging development of qualifying facilities as an important element of attaining Oregon’s clean energy goals. We will not repeat all of our prior recommendations here in full, but we have attached a table to these comments listing the issues and summary of the current status in the November 23rd Amendment.² With some exceptions, Oregon’s current standard contracts generally reflect sound policies. Despite this, the status quo for small scale renewable resources, with the exception of the Oregon Community Solar Program, has resulted in an extremely small number of new Oregon qualifying facilities (“QFs”) entering into contracts with Portland General Electric Company (“PGE”) and PacifiCorp in recent years. The Commission should keep in mind this big picture of both overall Public Utility Regulatory Policies Act (“PURPA”) development and that, in their totality, the November 23rd Amendment results in more harmful PURPA rules and policies compared to the status quo. This will undermine the development of small, Oregon based renewable resources at a time in which Oregon needs to use all available tools to meet the House Bill 2021 emissions reductions requirements. The Commission should instead, to the highest degree possible, improve rather than harm the development of a diverse array of permanently sustainable energy and use its regulatory authority to increase the marketability and improve the institutional climate for the development of QFs.

² See Attachment A.

These Reply Comments address two issues for which Administrative Law Judge (“ALJ”) Mapes requested additional comment in the memorandum dated November 23, 2022,³ as well as one significant change in the November 23rd Amendment that the QF Trade Associations oppose, and response to two arguments made by the Joint Utilities. Specifically, the QF Trade Associations address the following issues:

- Minimum Delivery Guarantee: The Commission should allow solar QFs and run-of-river hydropower QF to continue to elect to use the minimum availability guarantee, but if the Commission requires the use of a minimum delivery guarantee it should implement a 70% annual guarantee to ensure that QFs are not penalized for variability in solar or water availability.
- Creditworthiness: The Commission should require use of creditworthiness metrics that have relevance to the small QF business model, such as the QF Trade Associations’ proposals for use of the following options: (i) reasonable purchasing utility credit evaluation, *or* (ii) 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 power purchase agreement, *or* (iii) a suitable Dun and Bradstreet rating. The current proposal to rely solely on a rating by S&P or Moody’s should not be adopted because virtually no small QFs will possess ratings by S&P or Moody’s, which generally

³ ALJ Memorandum on Request for Comment at 1 (Nov. 23, 2022).

apply only to much larger companies and would not apply to Oregon irrigation districts or other public entities that should be able to meet other objective creditworthiness metrics.

- Cross-Default and Cure Period: The November 23rd Amendment includes provisions, Proposed OAR 860-029- 0123(1)(i) & (4)(c), that create a new default for “breach of any warranty or representation” in the power purchase agreement (“PPA”), and *provides no cure* for such a default. The QF Trade Associations oppose implementation of this provision, which is a problematic “cross default”, and even it is included in the rules, the applicable cure period should be one year or, in the alternative, the normal cure period of 30 days plus an additional 90 days.
- Legally Enforceable Obligation Rule: The Commission should continue to reject the Joint Utilities’ proposal that would change Commission policy on creation of a legally enforceable obligation.
- Cure Period for Delay Default: The Commission should continue to reject the Joint Utilities’ proposal to reduce the currently used cure period for delay defaults of one year to a new policy of providing just 180 days to cure delay defaults.

II. COMMENTS

A. Minimum Delivery Guarantee: A 70% MDG for Solar Is Reasonable; 90% Is Not.

ALJ Mapes’ memorandum requested comment on the method of calculating the minimum delivery obligation if it is to apply to solar QFs and requested empirical evidence in support of the proposal. As we have previously urged, the QF Trade Associations continue to submit that the Commission should allow solar QFs to continue to elect to use the minimum

availability guarantee, but if the Commission requires the use of a minimum delivery guarantee it should implement a 70% annual guarantee, averaged on a rolling two-year basis, to ensure that QFs are not penalized for variability in solar availability.⁴ The QF Trade Associations do not have access to publicly available, empirical data sets for the annual variability in solar resources, but our membership is very concerned that the current rule’s proposal to use a 90% threshold will trigger violations due solely to annual variability in solar irradiance.

While not necessarily empirical evidence, the QF Trade Associations have confirmed that the largest solar QF market in the nation, Duke Energy Corporation (“Duke”) in the Carolinas, uses a standard at least as lenient as that proposed by the QF Trade Associations’ here. North Carolina has the highest level of solar QF installations of any state, and the major utility, Duke and its affiliates, also operates with similar PURPA contracts in South Carolina.⁵ Specifically, Duke Energy Progress’s approved standard contract applicable to small QFs up to 1 MW in North Carolina contains *no minimum delivery guarantee* whatsoever.⁶ For larger QFs subject to Duke’s large QF PPA still offered in South Carolina, the minimum delivery guarantee is only

⁴ See Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules at 31 (Sept. 16, 2022).

⁵ See Manussawee Sukunta, *North Carolina has more PURPA-qualifying solar facilities than any other state*, Energy Information Administration (Aug. 23, 2016), <https://www.eia.gov/todayinenergy/detail.php?id=27632>.

⁶ A recent version of this tariff and standard contract was filed in North Carolina Public Utilities Commission Docket No. E-100, Sub 175, and is available at: <https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=926af082-16cf-4468-9c95-0de17b02f7b1>; see also Duke’s website: <https://www.duke-energy.com/Business/Products/Renewables/Generate-Your-Own?jur=NC01>.

70% averaged across a rolling two-year period. And the sole remedy for a violation is to reduce the rates paid to the QF in the following year—not termination, as the currently proposed Oregon rule would allow.

The Duke large QF PPA provision for South Carolina provides as follows:

8.5. Output Requirement. Starting the first full calendar year after the Commercial Operation Date of the Facility, for each year during the Delivery Period, *Seller shall deliver to Buyer no less than seventy percent (70%) of the Expected Annual Output averaged over two consecutive calendar years on a rolling basis during the Delivery Period (the “Net Output Requirement”).* Where a Permitted Excuse to Perform adversely affects actual generation output of the Facility, the Net Output Requirement shall be reduced by the amount of Energy not generated due to the Permitted Excuse to Perform; provided, however, Seller agrees that it must demonstrate to Buyer, in Buyer’s Commercially Reasonable discretion, that the Facility’s generation output was actually reduced due to a Permitted Excuse to Perform. *Buyer’s sole remedy for Seller’s failure to deliver the Net Output Requirement for any period of two consecutive years shall be to receive a credit against the Contract Price for each month during the immediately following full calendar year.* The foregoing monthly credit to Buyer shall be determined by (a) multiplying (i) the difference between the Net Output Requirement and the actual Energy (expressed in MWh) delivered by Seller and received by Buyer during the applicable time period by (ii) [50% of average Contract Price for Energy delivered to Buyer in the previous 12 months] and (b) then dividing the amount calculated by (a) above by twelve (12). If Seller fails to satisfy the Net Output Requirement for any two-year period, to determine compliance with the Net Output Requirement in the next rolling two-year period, then the amount of Energy generated in the first year of such two-year rolling period will be deemed to be the higher of (i) seventy percent (70%) of the Expected Annual Output

for such year, or (ii) the actual amount of Energy generated by the Facility in such year.⁷

The QF Trade Associations understand that the 70% threshold measured over two years has been a longstanding metric used by Duke in the Carolinas. Given that Duke has the largest solar QF market in the nation, this is a very relevant data point and could reasonably be considered an important benchmark by financing entities.

Thus, as previously explained, the current Oregon proposal is more onerous and risky to the QF than what is expected in other markets, and the QF Trade Associations continue to recommend that the Commission use a 70% threshold if a minimum delivery guarantee will be required for solar QFs.

B. Creditworthiness: S&P and Moody’s Ratings Are Not Reasonable Creditworthiness Measures for Small QFs.

ALJ Mapes’ memorandum requests comment on what S&P and Moody’s ratings would be reasonable to use if the Commission elects to use S&P and Moody’s ratings to evaluate the creditworthiness of a small QF. Respectfully, the QF Trade Associations continue to strongly oppose providing S&P and Moody’s ratings as the only objective criteria in the administrative rules for evaluating creditworthiness of a QF because those ratings agencies are irrelevant to the vast majority of small QFs. S&P and Moody’s ratings would generally apply only to much

⁷ Compliance Filing: Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s 2021 Avoided Cost Proceeding Pursuant to S.C. Code Ann. Section 58-41-20(A), Pub. Serv. Comm’n of S. Carolina Docket Nos. 2021-89-E & 2021-90-E at 19 (May 20, 2022) (emphasis added), available at: <https://dms.psc.sc.gov/Attachments/Matter/a14aa25b-08d5-45b9-8420-c6680d9cef5c>.

larger companies that have a need for a bond rating and would not apply to the typical Oregon irrigation districts or other public entities, even though such entities would typically be able to meet other objective creditworthiness metrics. Thus, there is no level of S&P or Moody’s ratings that is necessarily preferable for this purpose because there will be no S&P or Moody’s rating at all for these types of QFs.

The QF Trade Associations stand by their prior proposals, which were quite reasonable.⁸ Specifically, the Commission should require use of creditworthiness metrics that have relevance to the small QF business model. We propose providing the QFs the following options: (i) reasonable purchasing utility credit evaluation, *or* (ii) 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 power purchase agreement, *or* (iii) a suitable Dun and Bradstreet rating.⁹ 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. We urge the Commission and the ALJ to reconsider exclusion of our proposal from the rules.

It is important to recall how we got to where we are on the security and creditworthiness issue. The current situation (the status quo) is that new or existing QFs that do not meet the

⁸ See Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules at 40-41 (Sept. 16, 2022).

⁹ See Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules at 40-41 (Sept. 16, 2022).

creditworthiness requirements, must provide cash escrow, letter of credit, guaranty, step-in rights, or senior liens.

Now that the Commission has adopted, in large part, the utilities' proposal for Project Development and Default Security into the proposed rules, the utilities have refused to cooperate with the QF Trade Associations to develop objective creditworthiness criteria in the rules that such entities could actually meet. This outcome has occurred despite the claims made by the utilities at the start of the process, and to justify these significant changes in Oregon policy, that the typical irrigation district or other small government entity trying to use the standard contract would be able to meet the utilities' creditworthiness criteria and thus be exempt from needing to waste funds by posting a liquid security.

The only legitimate reason to require a QF to post liquid security is to ensure the QF will be able to pay damages it may owe under the PPA. The entire concept is designed to avoid the "judgment proof" developer that signs the PPA with a project-specific limited liability company and may be able to avoid paying damages under the PPA. If a QF owner or developer has the balance sheet to pay any damages it might owe under the power purchase agreement, then it is punitive and unnecessary to require a liquid security to be posted. Such QF is not "judgment proof" and would have no incentive to withhold payment owed to the utility because doing so would subject it to the added cost of defending itself against a lawsuit to collect such amounts owed. For example, if an irrigation district breaches its PPA and a court finds it owes the utility damages, the irrigation district is going to pay the damages it owes.

Thus, the QF Trade Associations propose that the creditworthiness requirement may be met in a number of different ways, including a reasonable purchasing utility credit evaluation,

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 power purchase agreement, or a suitable Dun and Bradstreet rating. Those criteria would apply consistently for evaluation of whether it is necessary to meet the Project Development Security or the Default Security requirements in the rules. The QF Trade Associations made preliminary edits on this point to the draft rules with comments filed on September 16, 2022, for further discussion of this subject, but there has not been meaningful consideration of the QF Trade Associations' proposal, much less any good reason supplied not to develop it into the rules. We submit that simply grafting an S&P or Moody's rating level into the rules is not reasonable when everyone knows that most small QFs do not have such ratings.

Relatedly, the QF Trade Associations recommend, now that it is apparent that the Commission will require liquid security of many QFs, that the Project Development Security and the Default Security for non-creditworthy QFs should also be satisfied by a surety bond. That would be in addition to the options in the current draft of the rules, which are cash, letter of credit, or parental guarantee from creditworthy parent company. The additional option of a bond would enable additional non-creditworthy QFs to meet a security requirement in a cost-effective manner. Typically, bonds may be obtained by an independent power producer at lower cost than a letter of credit and should provide sufficient protection for the purchasing utility. Bonds have

been used as acceptable forms of security in PPAs in other QF markets, such as South Carolina,¹⁰ and this Commission has approved the use of surety bonds as security against the interconnection upgrade costs to commence construction under QF interconnection agreements.¹¹

C. Cross-Default and Cure Period: The Commission Should Remove the Cross-Default Provision or, At Least Provide a Cure Period for Cross Defaults.

The November 23rd Amendment includes provisions, Proposed OAR 860-029-0123(1)(i) & (4)(c), that create a new default for “breach of any warranty or representation” in the PPA, and states that there will be *no cure* for such a default.¹² The QF Trade Associations

¹⁰ *In re Dominion Energy South Carolina, Inc.’s 2021 Avoided Cost Proceeding Pursuant to S.C. Code Ann Section 58-41-20(A)*, Pub. Serv. Comm’n of S. Carolina Docket No. 2021-88-E, Order No. 2022-329 at 48-49 (May 2, 2022).

¹¹ *See In re Staff Investigation into Interconnection of PURPA QFs with Nameplate Capacity Larger than 20 Megawatts to a Public Utility’s Transmission or Distribution System*, Docket No. UM 1401, Order No. 10-132, Appendix 6 to LGIP, § 11.5 (Apr. 7, 2010) (allowing use of a “surety bond” as security and requiring: “The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.”).

¹² The November 23rd Amendment provides as follows:

860-029-0123

Default , Damages, and Termination

(1) The following events, if uncured within the applicable cure period, may constitute a default by the qualifying facility under a standard power purchase agreement for which the purchasing utility may terminate the power purchase agreement subject to the provisions of this rule:

* * * *

(i) Breach of any warranty or representation in the power purchase agreement.

* * * *

(4) Cure periods:

* * * *

(c) There is no cure period for a Notice of Default issued under subsection (1)(h) or (1)(i).

oppose implementation of this provision on two grounds explained in more detail below: *first*, this provision is a problematic “cross-default” provision that would potentially sweep in potential defaults under a number of other agreements and make them defaults of the PPA, which can create problems in financing the facility; and *second*, even if the cross-default provision is included, it should include a standard cure period.

First, as the QF Trade Associations explained in the informal rulemaking phase, this type of provision can be very problematic for financing because it can put the PPA at risk of termination due to a myriad of other problems on other agreements and permitting requirements. The reason is that, although not addressed in the proposed administrative rules, the PPA could contain open-ended representations and warranties that require the QF to warrant that it will comply with applicable regulatory requirements and other contracts related to the facility, such as land use permits, interconnection agreement, or other less significant regulatory or contractual matters. For example, PacifiCorp’s current standard PPA contains the following representation related to creditworthiness: “Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.”¹³ Under such a cross-default arrangement, a problem under any other of the QF’s many contracts

¹³ PacifiCorp’s Standard QF PPA with MAG, § 3.2.8(c), https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Power_Purchase_Agreement_for_New_Firm_QF_And_Intermittent_Resource_with_MAG.pdf. Currently, the other two utilities do not appear to have such a sweeping warranty in their standard contracts, but there is no assurance they would be unable to add one if the Commission adopts this cross-default provision as a requirement in its administrative rules.

automatically also balloons into an even bigger problem under the PPA. Indeed, even a minor default on any other contract could become an immediate default under the PPA, thus putting at risk the PPA and fixed prices upon which the QF and its investors relied in constructing the facility. As one might imagine, such “cross-default” provisions are a frequent subject of concern of entities that finance QF projects and could easily deter investment in the proposed facility. The QF Trade Associations do not understand why this provision is necessary, and we continue to recommend its exclusion, as was proposed in the original Staff rules.

Second, if the cross-default provision will be included, it must contain at least the same cure periods that apply to other defaults. It is not typical to provide *no cure* period for breach of a representation or warranty. For example, PacifiCorp’s current standard PPA (which is the only of the three utilities to directly address the matter) applies the standard period of 30 days to cure such a default, with an additional 90 days in certain circumstances.¹⁴ The cross-default cure period, however, should be longer because other contracts related to the facility, such as land use permits, interconnection agreement, or other less significant regulatory or contractual matters may take significantly longer to cure. The cross-default cure period should be extended to one calendar year. Without a reasonable cure period, the PPA could be automatically terminated due to a relatively minor default under a relatively insignificant contract regarding the facility—a

¹⁴ PacifiCorp’s Standard QF PPA with MAG, §§ 11.1.1 & 11.2.2, https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Power_Purchase_Agreement_for_New_Firm_QF_And_Intermittent_Resource_with_MAG.pdf.

result that is patently unreasonable and will almost certainly cause problems to obtain financing to construct new renewable energy facilities in reliance on the Commission’s standard contracts. Thus, at a minimum, the rules should be amended to apply the cure period to the cross-default provision.

D. Effective Date/Legally Enforceable Obligation: The Commission Should Continue to Reject the Joint Utilities’ Unreasonable Proposal.

The proposed rules, including the November 23rd Amendment appear to maintain the Commission’s current policy regarding the effective date and legally enforceable obligations (“LEO”). The proposed rule OAR 860-029-0046(9) is less detailed than the current Commission orders, which the QF Trade Associations do not object to as long as there are no substantive changes. In contrast, the Joint Utilities proposed significant and harmful changes to current policies.

The proposed rules provide that: “A legally enforceable obligation will be considered established on the date on which the qualifying facility executes the final executable form of the power purchase agreement or such earlier date that the Commission may order.”

The current Commission policy is that a LEO will:

[E]xist when a QF signs a final draft of an executable standard contract that includes a scheduled commercial on-line date and information regarding the QF's minimum and maximum annual deliveries, thereby obligating itself to provide power or be subject to penalty for failing to deliver energy on the scheduled commercial on-line date.

We acknowledge, however, that problems may delay or obstruct progress towards a final draft of executable contract, such as failure by a utility to provide a QF with required information or documents on a timely basis. In the event of a dispute between a QF and a utility during the contracting process, we adopt Staffs proposal that we

determine, on a case-by-case basis, when a LEO is formed for the purpose of establishing an avoided cost price. A QF should alert us of a dispute by filing a complaint. Through the complaint process, the QF and the utility will have the opportunity to fully explain any concerns and present arguments regarding the formation of a LEO and an avoided cost price to be applied.¹⁵

The Joint Utilities propose to narrow the concept of a LEO to: “A legally enforceable obligation will be considered established on the date on which the qualifying facility executes the final executable form of the power purchase agreement.”¹⁶ As can be seen, this would eliminate the current Commission policy which allows a LEO to be formed prior to contract execution, including the specific guidance in prior Commission orders, and should be rejected. The QF Trade Associations do not expect that Commission will take the Joint Utilities' recommendation seriously; however, if the Commission intends to revise current Commission policy, then we request that the Commission not adopt any specific rule on this subject and address the issue in UM 2000.

E. Delay Default Cure Period: The Commission Should Continue to Reject the Joint Utilities' Unreasonable Proposal.

The Joint Utilities propose reducing the cure period for failing to meet the Scheduled Commercial Operation Date (“COD”) from one year to 180 days.¹⁷ The current rules and

¹⁵ *In re Commission Investigation into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 27-28 (May 13, 2016); *see also Blue Marmot V LLC, et al. v. PGE*, Docket Nos. UM 1829, UM 1830, UM 1831, UM 1832, UM 1833, Order No. 19-322 (Sept. 30, 2019).

¹⁶ Joint Utilities' Final Comments at 37-38 (May 10, 2022).

¹⁷ Joint Utilities' Initial Comments Regarding Group 2 Rules at 28-29 (Sept. 16, 2022).

proposed rules allow a cure period of one year for failing to meet the Scheduled COD.¹⁸ The QF Trade Associations do not support the Joint Utilities' recommendation and recommend the Commission maintain the status quo of one year cure period for failing to meet the Scheduled COD.

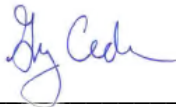
III. CONCLUSION

The QF Trade Associations appreciate the opportunity for provide these responsive comments and look forward to continued participation in this rulemaking.

Dated this 16th day of December 2022.

Respectfully submitted,

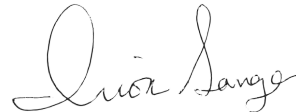
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¹⁸ OAR 860-029-0120(5); *see also* proposed OAR 860-029-0120(9).

Attachment A

**Table of Issues and Summary of the Parties' Position on the
November 23rd Amendments**

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
Reasonableness Requirement	No express requirement in the rules that parties exercise discretion in a reasonable manner.	Inserted throughout rules. ¹	First recommendation is a blanket reasonableness requirement, but alternative recommendation is to insert reasonableness requirement throughout rules including, but not limited to, contracting timeline, ability to hire third party to construct, and information required to obtain draft PPA. Also recommend a reasonableness requirement in the PPA itself. ²	Oppose a blanket reasonableness requirement, but open to inserting reasonableness standard in rules. Oppose reasonableness standard in contracting timeline. Oppose reasonableness requirement in the PPA itself. ³	Maintains post- <i>Sandy River v. PGE</i> policy that allows utilities, in certain circumstances, to act illegally, unreasonably, and discriminatorily without providing any ability for the QF to challenge those actions.

¹ See Proposed OAR 860-029-0044(1), -0120(5)(b)(B), -0120(6)(d), -0120(9)(a), -0120(11), -0120(16)(a)-(c), -0120(17)(b), -0120(18)(b)-(c), -0120(20), 0121(5), -0122(2)(a)-(b), -0123(4)(b)(A), -0123(5), -0123(9)(b), -0123(10), -0124(1), -0124(2)(b), -0124(3)(a)-(c), -0124(5).

² See, e.g., Joint Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Rules Group 1 at 29-31 (Mar. 11, 2022); see also Joint Final Comments of CREA, NIPPC, and the Coalition at 12-26 (May 10, 2022); see also Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 47-50 (Sept. 16, 2022).

³ Joint Utilities' Response Comments on the Group 2 Draft Rules at 63 (Oct. 7, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
REC Ownership	RECs transfer to utility once utility is resource deficient. ⁴	OAR 860-029-0045(3) – Retains previous policy.	Recommend QF retain RECs after end of fixed-price term. ⁵	Recommend no change because outside scope of docket. ⁶	Maintains status quo.
Five Mile Rule	UM 1129 Partial Stipulation, which requires two facilities to be separated by five miles if commonly owned and using the same motive force to qualify for standard rates and contract, but includes a common infrastructure and interconnection exception and a “common developer” exceptions to the	OAR 860-029-0045(4) – Reproduces the Partial Stipulation’s language into the administrative rules, but adds a new limitation, not included in the Partial Stipulation, which states, in effect, that whether two QFs are separated by five miles, or impermissibly affiliated, is measured as of the time of PPA	Recommend that the common developer exception be preserved, such that a developer can develop two or more adjacent projects under development within five miles as long as the ultimate facilities will be separately owned and operated at time of operation. ⁸ Alternatively, if Commission adopts a rule stating the five-mile affiliation restriction applies during the	Recommend the Commission clarify the exception does not allow a single entity to develop and own multiple facilities within five miles as long as the developer intends that the facilities will be separately owned once operational. ¹⁰	Harmful change from current policy.

⁴ In re OPUC Staff Investigation into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 5 (May 13, 2016).

⁵ Joint Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Rules Group 1 at 3-4 (Mar. 11, 2022).

⁶ Joint Utilities’ Responsive Comments at 4-7 (Mar. 25, 2022).

⁸ Joint Supplemental Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Rules Group 1 at 2-12 (Apr. 6, 2022).

¹⁰ Joint Utilities’ Final Comments at 30-31 (May 10, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
	five-mile separation rule. ⁷	execution, not after the conclusion of the development period when the facilities are constructed and energized as FERC measures compliance with qualification criteria.	development period instead of at time of contract execution, then clarify in the order adopting such new restriction that the new rule will be applied prospectively and is not intended to be applied retroactively. ⁹		
Process for Obtaining Standard PPA	Different for each utility. ¹¹	OAR 860-029-0046 <ul style="list-style-type: none"> • Information Required to Obtain Draft PPA – interconnection study agreement, meaningful steps to seek site control, FERC 	<ul style="list-style-type: none"> • QF Status – Recommend not requiring a QF to file a FERC Form 556 in order to obtain a draft PPA from utility.¹² • Site Control – Recommend clarification on 	Generally supportive, but recommend: <ul style="list-style-type: none"> • 15 business day turn around for a revised PPA in all circumstances, a final executable PPA, and a countersigned PPA; 	Overall harmful by allowing additional opportunities for the utilities to delay and refuse to reasonably and in good faith

⁷ *In re Investigation Related to Electric Utility Purchases From Qualifying Facilities*, Docket No. UM 1129, Order No. 06-538 at 10-11 (Sept. 20, 2006) (approving Partial Stipulation); Docket No. UM 1129, Order No. 06-586, Appendix B (Oct. 19, 2006) (amending Order No. 06-538, to include a copy of the Partial Stipulation as Appendix B).

⁹ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 46-47 (Sept. 16, 2022).

¹¹ Current OAR 860-029-0120(2) ("Each public utility must file with the Commission a schedule outlining the process for acquiring a standard power purchase agreement that is consistent with the provisions of OAR 860 division 029 and Commission policy and that satisfies the requirements of this rule.").

¹² Joint Comments of CREA, NIPPC, and the Coalition at 6-11 (Mar. 11, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		<p>Form 556, non-binding 12x24 delivery schedule and 8760 generation profile, POI(s) and POD, other miscellaneous information, and catch all provision.</p> <ul style="list-style-type: none"> Contracting Timeline – 15 business days to provide draft PPA, 10 business days for revised PPA unless change to POD, 10 business days for QF to execute PPA, and 5 business days for utility to execute PPA. 	<p>what is meant by demonstration of site control in order to obtain draft PPA.¹³</p> <ul style="list-style-type: none"> Multiple POIs – The QF should be able to identify multiple POIs with the request of a draft PPA and it should be able to be changed up to time of construction.¹⁴ Information Required to Obtain Draft PPA – Recommend deleting the catch-all provision in OAR 860-029-0046(2)(c)(N) regarding information 	<ul style="list-style-type: none"> Requirement that QF provide a 12x24 power delivery schedule and 8760 generation profile; The requirement that QF demonstrate ability to obtain QF status be met through a FERC Form 556 or a FERC order certifying the QF; and Requiring an interconnection study demonstrating a COD of 3 to 4 years if QF elects COD between 3 and 4 years.¹⁸ 	<p>negotiate and process contracts.</p> <p>Improvement on time for utility to respond to revised and final contracts.</p>

¹³ Joint Comments of CREA, NIPPC, and the Coalition at 12-13 (Mar. 11, 2022).

¹⁴ Joint Comments of CREA, NIPPC, and the Coalition at 13-15 (Mar. 11, 2022).

¹⁸ Joint Utilities' Initial Comments at 13-17 (Mar. 11, 2022); Joint Utilities' Responsive Comments at 11-16 (Mar. 25, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
			<p>required to obtain a draft PPA.¹⁵</p> <ul style="list-style-type: none"> • Contracting Timeline – Recommend shortening the timeline for responses to correct typos to 5 business days, shortening the 15-business day response to provide a draft standard PPA, and allowing either party to complete the standard contract.¹⁶ • Good Faith Requirement in Contracting – Recommend requiring parties to act in good faith 		

¹⁵ Joint Comments of CREA, NIPPC, and the Coalition at 15-17 (Mar. 11, 2022).

¹⁶ Joint Comments of CREA, NIPPC, and the Coalition at 17-19 (Mar. 11, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
			during contracting. ¹⁷		
Development Period (Effective Date to COD)	Three years, but longer if the Scheduled COD is reasonable and necessary and utility agrees. ¹⁹	OAR 860-029-0120(5) – QF may specify scheduled COD up to 3 year or up to 4 years if QF has received an interconnection study demonstrating it will take longer than 3 years to interconnect or QF demonstrates it cannot reasonably achieve COD within 3 years and utility consents, which cannot be unreasonably withheld. If schedule COD is more than 3 years,	Recommend a longer development period than three years. If three years is retained, the four-year cut off is arbitrary and should be removed. The utility should not be allowed to unreasonably withhold consent to an extension of COD if reasonable and necessary. The QF should be held harmless and the COD extended for any utility caused delay not just force majeure or utility default. ²⁰	Still recommend a cap of three years with no exceptions, but generally supportive of cap at four years and interconnection study requirement. ²¹ Do not recommend extensions for any utility caused delay and support extension due to utility default if Commission does not cap at three years with no exceptions. ²² Recommend off-system QFs should be prohibited from applying for a Scheduled COD in	Roughly maintains status quo on timing, but provides more specific details regarding reaching COD in more than three years. Harmful by reducing avoided cost price beyond three years.

¹⁷ Joint Comments of CREA, NIPPC, and the Coalition at 19-20 (Mar. 11, 2022).

¹⁹ Current OAR 860-029-0120(4)(a)-(b).

²⁰ Joint Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Rules Group 1 at 22-27 (Mar. 11, 2022); *see also* Joint Final Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Rules Group 1 at 30-32 (May 10, 2022).

²¹ Joint Utilities' Initial Comments at 18-23 (Mar. 11, 2022).

²² Joint Utilities' Responsive Comments at 28-29 (Mar. 25, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		the fixed-price term will be reduced unless interconnection study indicates it will take between 3 and 4 years to interconnect or in the case of an excused delay (e.g., force majeure or utility default). Scheduled COD cannot be longer than 4 years except in the case of an excused delay (e.g., force majeure or utility default).		excess of three years. ²³	
Modifications to Scheduled COD	Not addressed in OPUC Rules.	OAR 860-029-0120(6) – QF may terminate PPA or modify scheduled COD up to 4 years if within 6 months after effective date the QF it receives an interconnection	Support QF's ability to terminate a standard PPA within six months of contract execution if interconnection study shows uneconomic cost estimate or timeline to construct beyond four-year	Oppose provision on QF's ability to terminate within six months with interconnection study. ²⁵ Recommend limiting the QF's ability to extend the scheduled COD or	Improvement.

²³ Joint Utilities' Final Comments at 19 (May 10, 2022).

²⁵ Joint Utilities' Final Comments at 39 (May 10, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		study that includes an estimated time to interconnect longer than development period or includes uneconomic interconnection costs.	period but recommend Commission clarify QF can unilaterally terminate the PPA at any time subject to damages. ²⁴	extend any cure period related to the scheduled COD to 180 days for a force majeure event. ²⁶	
Fixed Price/Contract Term	Purchase term of 20 years and fixed-price term of 15 years. ²⁷	OAR 860-029-120(2) – Retains previous policy.	Recommend a 20-year fixed price term. ²⁸	Recommend retaining current policy of 15-year fixed price term. ²⁹	Maintains status quo.
Commencement of Fixed Price Period and Purchase Period	Scheduled initial delivery date for PacifiCorp, scheduled COD for PGE, and actual COD for Idaho Power.	OAR 860-029-0120(4), (7) ³⁰ – Begins earlier of the COD or scheduled COD unless in the case of an excused delay (e.g., force majeure or utility default), utility	Recommend the terms start on actual COD not scheduled COD. ³¹	Recommend the terms start on scheduled COD. ³²	Slightly harmful to QFs as compared to current policy for PGE and PacifiCorp, and very harmful for Idaho Power.

²⁴ Joint Reply Comments of CREA, NIPPC, and the Coalition at 10-11 (Mar. 25, 2022).

²⁶ Joint Utilities' Initial Comments at 24 (Mar. 11, 2022).

²⁷ Current OAR 860-029-0120(3), -130(2).

²⁸ Joint Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Rules Group 1 at 20-22 (Mar. 11, 2022).

²⁹ Joint Utilities' Responsive Comments at 23-25 (Mar. 25, 2022).

³⁰ Proposed OAR 860-029-0120(7) appears to be a duplicate of OAR 860-029-0120(4).

³¹ Joint Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Rules Group 1 at 27-28 (Mar. 11, 2022).

³² Joint Utilities' Responsive Comments at 25-28 (Mar. 25, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		agreement to extend, or modification allowed under rules.			
Jurisdiction Over Disputes	Commission has ruled that its jurisdiction depends on each issue.	Nov. 23 rd rule removed a provision expending OPUC's jurisdiction in the initial proposed rules at 860-029-120(20).	Support Nov. 23 rd rules' deletion of the provision. ³³	Support adding language in the rules purporting to give the Commission jurisdiction over disputes arising from a standard PPA. ³⁴	Maintains status quo.
Insurance	QFs 200 kW or less are not required to obtain general liability insurance but QFs above 200 kW are required to obtain general liability insurance at a rating of "B+" or higher from the A.M. Best Company. ³⁵	OAR 860-029-0120(19) – QFs over 200 kW must maintain insurance coverage of \$1 million per occurrence and \$5 million in aggregate insurance at a rating of "A-" or better by A.M. Best Company.	Recommend continued exemption for QFs under 200 kW, \$1 million per occurrence for QFs above 200 kW, and \$2 million in aggregate insurance for QFs above 200 kW. ³⁶	Generally, support the insurance requirements but recommend deleting exemption for QFs under 200 kW, requiring reduced amounts of \$2 million for QFs under 200 kW, and requiring \$1 million per occurrence for QFs greater than 1 MW. ³⁷	Harmful.

³³ Joint Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Rules Group 1 at 28 (Mar. 11, 2022).

³⁴ Joint Utilities' Initial Comments at 26 (Mar. 11, 2022).

³⁵ Docket No. UM 1129, Order No. 05-584 at 51 (May 13, 2005); Docket No. UM 1129, Order No. 06-538 at 4 (Sept. 20, 2006).

³⁶ Joint Reply Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Rules Group 1 at 4-5 (Mar. 25, 2022).

³⁷ Joint Utilities' Initial Comments at 26 (Mar. 11, 2022); Joint Utilities' Final Comments at 41-42 (May 10, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
Security	If QF is unable to meet the utility's creditworthiness requirements, it must post default security through credit ratings, senior liens, step-in rights, cash escrow, or a letter of credit. ³⁸ Construction default provisions for security must be consistent with default security provisions. ³⁹ Utilities have various methodologies to calculate security based on the estimated market costs for	OAR 860-029-0120(17)-(18) <ul style="list-style-type: none"> • Project Development Security – Only new QFs must post with 60 days if do not meet credit worthiness requirements in rules. QF satisfies project development security with cash escrow, letter of credit, or guaranty. • Default Security – All QFs must post at commercial operation if do not meet 	Oppose liquid security requirements before or after commercial for small QF. ⁴¹ However, if liquid security will be required, recommend the following: <ul style="list-style-type: none"> • Allowing a QF to also use a surety bond to meet security requirements;⁴² • Removing liquid security requirement for default security (post-COD), but support amendment to allow step-in rights or senior liens for default security if 	Generally supportive of security requirements, but recommend the following: <ul style="list-style-type: none"> • Remove ability to use step-in rights or senior liens for default security;⁴⁸ • Include the Joint Utilities' creditworthiness criteria in the rules;⁴⁹ • Timing to Post – the rules should provide 30 days after contract execution to post project development security or at 	Harmful.

³⁸ Docket No. UM 1129, Order No. 05-584 at 44-45 (May 13, 2005).

³⁹ Docket No. UM 1129, Order No. 05-584 at 47 (May 13, 2005).

⁴¹ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 39 (Sept. 16, 2022).

⁴² Comments of CREA, NIPPC, and the Coalition on Amendments to Rules at 8-10 (Dec. 16, 2022).

⁴⁸ Joint Utilities' Response Comments on the Group 2 Draft Rules at 58-59 (Oct. 7, 2022).

⁴⁹ Joint Utilities' Response Comments on the Group 2 Draft Rules at 60-61 (Oct. 7, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
	replacement power. ⁴⁰	creditworthiness requirements. QF satisfies default security with cash escrow, letter of credit, guaranty, step-in rights, or senior liens. <ul style="list-style-type: none"> • Rules do not currently propose amounts of security. 	QF does not meet creditworthiness requirements; ⁴³ <ul style="list-style-type: none"> • Creditworthiness Requirements – the rules should provide objective criteria to ensure that creditworthy QFs can avoid liquid security;⁴⁴ • Timing to Post – the rules should provide 180 days after contract execution to post project development security (pre-COD);⁴⁵ • Amount – the Joint Utilities' 	least not extend beyond 60 days; ⁵⁰ <ul style="list-style-type: none"> • Amount – require project development security up to \$150 per kW and default security up to \$50 per kW;⁵¹ and • Exempt existing QF from posting project development security at contract renewals only if the QF renews within a year of the existing PPA expiration.⁵² 	

⁴⁰ Docket No. UM 1129, Order No. 06-538 at 20 (Sept. 20, 2006).

⁴³ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 39 (Sept. 16, 2022).

⁴⁴ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 40-41 (Sept. 16, 2022).

⁴⁵ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 41-45 (Sept. 16, 2022).

⁵⁰ Joint Utilities' Response Comments on the Group 2 Draft Rules at 61-62 (Oct. 7, 2022).

⁵¹ Joint Utilities' Final Comments at 25-27 (May 10, 2022).

⁵² Joint Utilities' Response Comments on the Group 2 Draft Rules at 62 (Oct. 7, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
			<p>recommendation of \$150 per kW for project development security and \$50 per kW for default security is too high and in excess of what has been required in other states for small QFs, so recommend the amounts be reduced;⁴⁶ and</p> <ul style="list-style-type: none"> • Agree with Nov. 23rd rules' provisions providing that existing QFs should not be required to post project development security.⁴⁷ 		
Effective Date/Legally	LEO is formed when a QF signs a	OAR 860-029-0046(9) – LEO	Recommend maintaining current	Recommend that a LEO is formed when	Maintains the status quo.

⁴⁶ Joint Reply Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Rules Group 1 at 7-9 (Mar. 25, 2022).

⁴⁷ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 40, 45 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
Enforceable Obligation (“LEO”)	final draft of an executable PPA or earlier through Commission determination on a case-by-case basis. ⁵³	established when QF executes the final executable form of the PPA or earlier date the Commission may order.	policy that a LEO is formed when a QF signs a final draft of an executable PPA or earlier through Commission determination. If the Commission is considering the Joint Utilities' proposal, then recommend postponing the issue until UM 2000. ⁵⁴	the QF executes the final executable form of the PPA. ⁵⁵	
Force Majeure	Not in current rules because defined in each utility's standard contract. ⁵⁶	OAR 860-029-0122 – Defines force majeure, includes examples of force majeure, and includes events that do not constitute force majeure.	Recommend removing the specific force majeure contractual language from rule and replace with general principle that a force majeure provision should be included in every PPA. ⁵⁷ If detailed provision	Support defining force majeure in the rules but recommend that the party not claiming force majeure can terminate the PPA if the force majeure	Harmful.

⁵³ Docket No. UM 1610, Order No. 16-174 at 27-28 (May 13, 2016); *see also Blue Marmot V LLC, et al. v. PGE*, Docket Nos. UM 1829, UM 1830, UM 1831, UM 1832, UM 1833, Order No. 19-322 (Sept. 30, 2019).

⁵⁴ Comments of CREA, NIPPC, and the Coalition on Amendments to Rules at 13-15 (Dec. 16, 2022).

⁵⁵ Joint Utilities' Final Comments at 37-38 (May 10, 2022).

⁵⁶ Docket No. UM 1129, Order No. 06-538 at 24-25 (Sept. 20, 2006).

⁵⁷ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 1-3 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
			included in the rules, then recommend revisions because it is narrower than typically included in PPAs. ⁵⁸ Do not support the utilities' 180-day limit on force majeure events. ⁵⁹	extends beyond 180 days. ⁶⁰	
Default, Damages, and Termination	Damages are capped at 100 percent of the QF contract price multiplied by the amount of energy the QF failed to deliver. ⁶¹ Termination damages are for a period of 24 months. ⁶² The cure period for failing to	OAR 860-029-0123, 860-029-0120(9) <ul style="list-style-type: none"> • Separates between utility and QF defaults; • Includes defaults for various scenarios such as failure to post security, failure to sell entire output unless no obligation to do 	<ul style="list-style-type: none"> • Damages – Support Nov. 23rd rules' provisions that the damages owed to the utility by a QF in the event of default or termination should be capped at the contract price.⁶⁴ If the damages will be uncapped, then recommend 	<ul style="list-style-type: none"> • Damages – Recommend revising the damages provisions to include more detail on how damages are calculated.⁶⁹ • Default – Recommend adding two new defaults and 	Harmful with respect to the new cross-default provision.

⁵⁸ See Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 3-7 (Sept. 16, 2022).

⁵⁹ Reply Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 22-24 (Oct. 7, 2022).

⁶⁰ Joint Utilities' Initial Comments Regarding Group 2 Rules at 24-27 (Sept. 16, 2022).

⁶¹ Docket No. UM 1129, Order No. 06-538 at 5-6 (Sept. 20, 2006).

⁶² Docket No. UM 1129, Order No. 06-538 at 3-4 (Sept. 20, 2006).

⁶⁴ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 7-10 (Sept. 16, 2022).

⁶⁹ Joint Utilities' Initial Comments Regarding Group 2 Rules at 27 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
	meet the Scheduled COD is one year. ⁶³	<p>so, failure to make payments, failure to satisfy the MAG for 2 years or MDG for 3 years, breach of warranty or representation in PPA, and more;</p> <ul style="list-style-type: none"> • Provides a one-year cure period for missing scheduled COD; • Allows extension of 30-day cure period by 90 days if certain conditions met; and • Caps termination and default damages at contract price 	<p>removing the waiver of consequential damages owed by the utility.⁶⁵</p> <ul style="list-style-type: none"> • Default – Support Nov. 23rd rules' edits to prior proposed rules, keeping revision that delivery of less than all net output is not a default unless it is PURPA contract that requires delivery of all of the QF's net output, but strongly recommend deleting the default for breach of warranty or 	<p>separating between utility and QF defaults.⁷⁰</p> <ul style="list-style-type: none"> • Cure Period – Recommend reducing the cure period for failing to meet the Scheduled COD from one year to 180 days and moving to New Rule #6 from OAR 860-029-0120(7).⁷¹ The cure period for other defaults should be extended up to 90 days in certain circumstances.⁷² 	

⁶³ OAR 860-029-0120(5).

⁶⁵ Reply Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 16 (Oct. 7, 2022).

⁷⁰ Joint Utilities' Initial Comments Regarding Group 2 Rules at 28 (Sept. 16, 2022).

⁷¹ Joint Utilities' Initial Comments Regarding Group 2 Rules at 28-29 (Sept. 16, 2022).

⁷² Joint Utilities' Response Comments on the Group 2 Draft Rules at 47, 51-52 (Oct. 7, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
			<p>representation (cross-default).⁶⁶</p> <ul style="list-style-type: none"> • Termination – Recommend reinserting former Staff New Rule #8 that specified certain events that did not justify PPA termination.⁶⁷ • Cure Period – Support the Nov. 23rd rules' inclusion of an extension of the 30-day cure period for various defaults to an additional 90 days in certain circumstances; but recommend that if the default for breach of warranty or representation (cross-default) is 		

⁶⁶ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 11-12, Attachment at 28-30 (Sept. 16, 2022).

⁶⁷ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 10-11 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
			not deleted, then adding a cure period of one year. ⁶⁸		
Deliveries from Off-System QFs	Not addressed in OPUC Rules.	OAR 860-029-0044 – Outlines process for proposing alternate PODs for off-system QFs and allows utility to include provision in PPA reopening the PPA to allow the OPUC to potentially allocate Network Upgrade costs to off-system QF but development period does not commence until after the cost allocation process.	Recommend removing this contract reopener provision (“New Rule #1”). ⁷³ In the alternative, recommend significantly revising the rule to limit the harm caused by the contract reopener, but only after the issues in UM 2032 are addressed, ⁷⁴ by: <ul style="list-style-type: none"> <li data-bbox="1052 935 1346 1149">• Extending the Scheduled COD on a day-for-day basis until a final order is issued and amendments to the 	Generally, support but recommend several revisions: <ul style="list-style-type: none"> <li data-bbox="1381 570 1652 670">• Apply New Rule #1 to on-system QFs too;⁷⁹ <li data-bbox="1381 678 1652 930">• No delay in the development period/extension of the Scheduled COD from the cost allocation process;⁸⁰ <li data-bbox="1381 938 1652 1149">• Clarify that an off-system QF must have obtained firm transmission before the utility 	New policy.

⁶⁸ Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules, Attachment at 29 (Sept. 16, 2022); Comments of CREA, NIPPC, and the Coalition on Amendments to Rules at 11-13 (Dec. 16, 2022)..

⁷³ Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules at 12 (Sept. 16, 2022).

⁷⁴ Reply Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules at 2-6 (Oct. 7, 2022).

⁷⁹ Joint Utilities’ Initial Comments Regarding Group 2 Rules at 5-7 (Sept. 16, 2022).

⁸⁰ Joint Utilities’ Initial Comments Regarding Group 2 Rules at 7-8 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
			PPA are executed; ⁷⁵ <ul style="list-style-type: none"> • Requiring the utility to provide the evidence demonstrating that a QF's proposed POD lacks adequate capacity, reasonably study alternative PODs, and promptly inform the QF of viable alternative PODs;⁷⁶ • Allowing a reasonable opportunity for the QF to change its POD after contract execution so that the same standard applies to POD selection pre- and 	is required to designate the QF as a network resource; ⁸¹ <ul style="list-style-type: none"> • Utility is required to request an effective date for commencement of network transmission service for a QF 90 days prior to the Scheduled COD not 180 days⁸²; and • Allow a contested case proceeding for disputes of cost allocation as long as either party can elect to proceed to it.⁸³ 	

⁷⁵ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 15-16 (Sept. 16, 2022).

⁷⁶ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 16-17 (Sept. 16, 2022).

⁸¹ Joint Utilities' Initial Comments Regarding Group 2 Rules at 8-9 (Sept. 16, 2022).

⁸² Joint Utilities' Initial Comments Regarding Group 2 Rules at 9 (Sept. 16, 2022).

⁸³ Joint Utilities' Response Comments on the Group 2 Draft Rules at 9 (Oct. 7, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
			post-contract execution; ⁷⁷ and <ul style="list-style-type: none"> • Providing a contested case proceeding if the QF wants to challenge the proper allocation of the costs.⁷⁸ 		
Delivery and Purchase – Monthly Netting, Price Paid for Excess Energy, and Imbalance Rules	Not addressed in OPUC Rules.	OAR 860-029-0121 For off-system QFs, the utility must offer to receive deliveries of any form of scheduling offered to the QF by transmission provider including intra-hour scheduling. For off-system QFs, the utility must accept energy imbalance ancillary services in certain	Recommend that the utility must pay the QF the lesser of the contract price or market index rate for any surplus or excess energy over the QF's monthly net output; but support Nov. 23 rd rules' amendment stating that off-system PPAs allow the use of intra-hour scheduling methods. ⁸⁴	Recommend adding language specifying when an off-system QF may deliver imbalance energy, revisions to the rules to clearly explain how surplus delivery is calculated for off-system QFs, and the utility pay the QF the lower of 85 percent of the market index rate or 85 percent of the contract price for test energy. ⁸⁵	New policy.

⁷⁷ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 17-18 (Sept. 16, 2022).

⁷⁸ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 18-20 (Sept. 16, 2022).

⁸⁴ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 21-22 (Sept. 16, 2022).

⁸⁵ Joint Utilities' Initial Comments Regarding Group 2 Rules at 20-24 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		circumstances and must net scheduled deliveries and metered net output on a monthly basis; but utility can accept but not pay for monthly surplus energy.			
Ability to Come Online Prior to Scheduled COD	A QF can come on line at any time prior to schedule COD. ⁸⁶	OAR 860-029-0121(5) – A QF may come online 180 days early but may not come online more than 180 days early unless the utility consents. A utility may require the QF to wait to come online 90 days early if the utility is unable to accept delivery but the utility is obligated to	Recommend that a QF be allowed to achieve commercial operation and its fixed-priced and purchase terms up to 180 days early if it provides 60 days of advance notice to the utility and allow commercial operation even earlier if the utility has no valid reason to refuse to accept the QF energy. ⁸⁷	Recommend that a QF may only come online 90 days prior to its Scheduled COD. ⁸⁸ Recommend a QF can sell start-up Test Energy earlier than 90 days only if the utility can modify the network resource designation for the facility at no additional cost or	Harmful.

⁸⁶ The QF Trade Associations are unaware of any current OPUC Rules or Orders on this issue, so the current is based on the utilities' PPAs that allow a QF to come on line early.

⁸⁷ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 23-26 (Sept. 16, 2022); *see also* Reply Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 17-21 (Oct. 7, 2022).

⁸⁸ Joint Utilities' Initial Comments Regarding Group 2 Rules at 21 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		make reasonable efforts to obtain transmission service 180 days before scheduled COD.		economic impact to the utility. ⁸⁹	
Coordination Between QFs and Utilities	Not addressed in OPUC Rules. Varies by utility in their standard contracts.	OAR 860-029-0124 <ul style="list-style-type: none"> • QF must operate, maintain, and pay for coordination equipment. • QF must specify to utility annual planned outages at least 1 month but no more than 3 months prior to the first day of that purchase year. • Utility can specify 2 calendar months of High Demand Months that QF cannot schedule 	Generally support the revisions included in the Nov. 23 rd rules, which incorporated most of the QF's previously recommended clarifications. ⁹⁰	Recommend clarifying edits and adding that the technical specifications regarding how the QF output is delivered the QF's obligations to maintain and operate the facilities can be required by the interconnection agreement or the purchasing utility. ⁹¹	New policy.

⁸⁹ Joint Utilities' Response Comments on the Group 2 Draft Rules at 27-29 (Oct. 7, 2022).

⁹⁰ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 26-28 (Sept. 16, 2022).

⁹¹ Joint Utilities' Initial Comments Regarding Group 2 Rules at 33-36 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		<p>planned outages, but the QF can schedule planned outages during those months during times when there is no motive force (e.g., solar QFs at night).</p> <ul style="list-style-type: none"> • QF must notify utility at least 5 days before maintenance outage and try to avoid High Demand Months. • QF must promptly notify utility of any forced outage above 10 percent of the nameplate capacity rating or any emergency deratings and outages above 5 percent of the nameplate capacity rating. 			

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
Minimum Availability Guarantee (“MAG”)	For intermittent resources, including wind, solar, and run-of-river, the standard contracts should include a MAG and for wind it is a 90 percent guarantee that starts in year 3 for new resources and year 1 for renewing facilities with an exception of 200 hours of planned maintenance per turbine per year. ⁹²	OAR 860-029-0120(12)-(13) – MAG required for wind and run-of-river hydro is 90 percent, measured on a per turbine basis for wind, and includes 200 hours of planned maintenance per turbine per year that does not count towards MAG. The MAG will be reduced on a pro rata basis for force majeure, default by utility, or interconnection and transmission curtailment. Failure to meet MAG damages capped at contract price.	Generally support the revisions included in the Nov. 23 rd rules, which incorporated most of the QF’s previously recommended clarifications; ⁹³ but recommend that MAG also be available to solar QFs.	Recommend setting the MAG at 85 percent in the first year for new QFs and 90 percent thereafter, eliminating the one-year delay of the MAG for renewing QFs, removing the exception of 200 hours for planned maintenance, allowing run-of-the-river hydro to select a MAG, clarifying the calculation of damages for failure to meet the MAG is multiplied by the Index Rate, and including a carve out of the MAG only for force majeure. ⁹⁴	Harmful.

⁹² Docket No. UM 1610, Order No. 14-058 at 30 (Feb. 24, 2014).

⁹³ Comments of CREA, NIPPC, and the Coalition on Staff’s Proposed Group 2 Rules at 33 (Sept. 16, 2022).

⁹⁴ Joint Utilities’ Initial Comments Regarding Group 2 Rules at 12-14 (Sept. 16, 2022); Joint Utilities’ Response Comments on the Group 2 Draft Rules at 10-14 (Oct. 7, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		Utility may terminate PPA after 2 consecutive years of failure to meet MAG.			
Minimum Delivery Guarantee (“MDG”)	Standard contracts can require a minimum annual delivery requirement, but intermittent resources are subject to a MAG. ⁹⁵	OAR 860-029-0120(14)-(15) – MDG required for solar, geothermal, biomass, and baseload hydro QFs at 90 percent. The MAG will be reduced on a pro rata basis for force majeure, default by utility, or interconnection and transmission curtailment. Failure to meet MDG damages capped at contract price. Utility may	Generally, recommend a MAG for solar instead of MDG. Alternatively, recommend that the MDG should be 70 percent of the expected energy, the QF should be able to provide a reasonable forecast of its expected energy and modify its expected energy over time, the rules should include accommodations for unique unforeseen impacts such as climate change, the	Generally supportive but recommend clarifying changes to the calculation of damages and that the MDG be reduced on a pro rata basis for force majeure and purchasing utility default only. ⁹⁷ Recommend an 80 percent MDG if run-of-river hydro selected an MDG. ⁹⁸	Harmful.

⁹⁵ Docket No. UM 1129, Order No. 06-538 at 2 (Sept. 20, 2006); Docket No. UM 1129, Order No. 07-360 at 33-34 (Aug. 20, 2007); Docket No. UM 1610, Order No. 14-058 at 30 (Feb. 24, 2014).

⁹⁷ Joint Utilities' Initial Comments Regarding Group 2 Rules at 15-16 (Sept. 16, 2022); Joint Utilities' Response Comments on the Group 2 Draft Rules at 19 (Oct. 7, 2022).

⁹⁸ Joint Utilities' Response Comments on the Group 2 Draft Rules at 15-16 (Oct. 7, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		terminate PPA after 3 consecutive years of failure to meet MDG.	MDG should only apply to QFs selling energy and capacity, and the MDG should be reduced on a pro rata basis for force majeure, utility default, and interconnection and transmission curtailment. ⁹⁶		
Modifications to QFs	In certain circumstances/project expansions, the QF can: 1) increase up to the size threshold for obtaining a standard contract with the incremental generation paid at the rate in the executed contract; and 2) increase beyond the size threshold with the incremental generation beyond the size threshold	OAR 860-029-0120(16) – During the development period, the QF may make reasonable modifications. After COD, the QF may not make modifications that increase the nameplate capacity rating in PPA or increase net output in the PPA more than 10 percent. The	Recommend QFs retain executed PPA and are paid contracted-for prices if, during the PPA term, the facility changes its nameplate capacity rating within the applicable threshold for that QF, or otherwise conducts any upgrade that increases the efficiency and net output of its facility without	Generally, support proposed rules especially provisions prohibiting increases in nameplate capacity rating and requiring updating pricing for increases in net output over 10 percent. ¹⁰⁴ Recommend that any modification to a QF should require prior written approval of the utility and	Harmful.

⁹⁶ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 28-33 (Sept. 16, 2022); Reply Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 9 (Oct. 7, 2022).

¹⁰⁴ Joint Utilities' Initial Comments Regarding Group 2 Rules at 17 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23 rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
	paid at a negotiated contract price. ⁹⁹	utility must approve any modification post-COD that increase net output below 10 percent, but approval cannot be unreasonably withheld. If the modification does not increase nameplate capacity rating but increases the net output more than 10 percent, then utility approval is not required if certain conditions are met and the upgrades above 10 percent are paid current prices or all output is paid a blended rate. If the modification causes	changing the nameplate capacity. ¹⁰⁰ Recommend that if a QF increases its nameplate capacity beyond the relevant threshold, then the QF should enter into a new PPA for all output but only generation above threshold is paid current prices. ¹⁰¹ Recommend the rules explicitly state generators have the option to improve operations and on-site reliability such as installing battery storage and be paid for the incremental storage	deleting provision in subsection (e) that exempts QF from damages for any default caused by its failure to maintain eligibility for a standard PPA if it terminates its PPA in order to increase its nameplate capacity rating. ¹⁰⁵	

⁹⁹ Docket No. UM 1129, Order No. 06-538 at 38-39 (Sept. 20, 2006); *PGE v. Pacific Northwest Solar, LLC*, Docket No. UM 1894, Order No. 18-284 at 5-8 (Aug. 2, 2018).

¹⁰⁰ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 33-34, 36 (Sept. 16, 2022); Reply Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 13 (Oct. 7, 2022).

¹⁰¹ Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 36 (Sept. 16, 2022).

¹⁰⁵ Joint Utilities' Initial Comments Regarding Group 2 Rules at 17-18 (Sept. 16, 2022).

Topic	Current Rule/Policy	Proposed Rules from November 23rd Version	QF Trade Associations' Position	Joint Utilities' Position	Effect
		an increase in nameplate capacity rating, then the QF must terminate the PPA and renegotiate a new PPA.	capacity value added. ¹⁰² In the alternative, recommend a QF be able to increase its nameplate capacity rating or net output but be paid current prices for any increase. ¹⁰³		

¹⁰² Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 37-38 (Sept. 16, 2022).

¹⁰³ Reply Comments of CREA, NIPPC, and the Coalition on Staff's Proposed Group 2 Rules at 13 (Oct. 7, 2022).