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December 22, 2022

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, Oregon 97308-1088

**Re: Docket UM 2000 - In the Matter of Public Utility Commission of Oregon,
Investigation into PURPA Implementation.**

Attention Filing Center:

Attached for filing in the above-captioned docket are the Joint Utilities' Scoping and Process Comments.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2000

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation into PURPA Implementation

JOINT UTILITIES'
SCOPING AND PROCESS COMMENTS

Idaho Power Company (Idaho Power), PacifiCorp dba Pacific Power (PacifiCorp), and Portland General Electric Company (PGE) (together, the Joint Utilities) appreciate the Public Utility Commission of Oregon (Commission) Staff’s effort to begin the long-awaited docket UM 2000 investigation into avoided cost pricing and other Public Utility Regulatory Policies Act of 1978 (PURPA) issues and support Staff’s goal of determining a clear and efficient process for the Commission to consider and resolve the many important issues in this docket. These comments expand upon the Joint Utilities’ remarks at the November 30, 2022, workshop and respond to Staff’s Process Proposal and Scope for docket UM 2000¹ and comments from Staff and stakeholders during the workshop.

I. SCOPE

The Joint Utilities consider Staff’s proposed scoping generally complete with respect to topics that must be addressed in this docket. However, the Joint Utilities note significant overlap of issues addressed in the three phases and propose to remedy this overlap with clearer and more delineated explanations of each phase, its specific purpose and objective, and the associated

¹ Docket UM 2000, Staff’s Process Proposal and Scope (Nov. 1, 2022).

process. Further, the Joint Utilities reserve the right to argue that existing Commission policy should *not* be revisited on some of the issues Staff identifies.

As discussed during the workshop, the Joint Utilities also seek to add a narrow but important issue that does not fall within the scope of the Commission’s other ongoing PURPA dockets. Specifically, the Commission should revise Oregon Administrative Rule (OAR) 860-029-0130(4)(d)² to allow utilities to terminate negotiated qualifying facility (QF) contracts when the utility is resource sufficient if the QF fails to meet the scheduled commercial operation date specified in the power purchase agreement. The Commission previously prohibited termination during the sufficiency period for standard contracts as well, but it changed that policy many years ago.³ The Joint Utilities are aware of no reason to treat negotiated contracts differently in this respect.

II. PROCESS

A. **Phase 1 should be framed as a scoping phase and should not result in binding decisions.**

Staff proposed that the Commission resolve several “threshold issues” via decision at a public meeting in Phase 1, before addressing avoided cost pricing inputs and methods in a contested case in Phase 2, and then considering implementation issues in Phase 3.⁴ The Joint Utilities understand that Staff’s proposal for Phase 1 stems from Staff’s desire to have a well-

² “Delay of commercial operation should not be a cause of termination if the utility determines at the time of contract execution that it will be resource sufficient as of the qualifying facility scheduled commercial operation date specified in the power purchase agreement. The utility may impose damages.”

³ See *In re Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket UM 1610, Order No. 15-130 (Apr. 16, 2015); see also OAR 860-029-0120(6) (“Subject to the one-year cure period in section (5) above, a utility may terminate a standard power purchase agreement for failure to meet the scheduled commercial on-line date in the power purchase agreement, if such failure is not otherwise excused under the agreement.”).

⁴ Docket UM 2000, Staff’s Process Proposal and Scope at 2.

scoped contested case in Phase 2—a goal the Joint Utilities support. However, the Joint Utilities recommend that Phase 1 be structured as an informal, scoping phase rather than one in which the Commission makes binding decisions on an expedited timeline and with limited process, as Staff proposed.⁵ Because the issues in Phases 1 and 2 are closely related (and in some cases the same), an initial scoping period will ensure that topics covered in Phase 1 are fully explored, and potentially narrowed, prior to entering Phase 2, without prematurely foreclosing robust consideration of important issues in the Phase 2 contested case.

Under the Joint Utilities’ recommended scoping approach, Phase 1 would include party workshops and comments intended to explore recommendations for Phase 1 issues—a process that will increase understanding among the parties and potentially narrow the issues to be addressed during the contested case in Phase 2. If, during Phase 1, the parties believe that they require guidance from the Commission on any issue before entering the contested case phase, the parties may request that the Commissioners attend a workshop to provide their initial perspectives on an informal, non-decisional basis.

Because many of the Phase 1 and Phase 2 issues are inherently intertwined, it is not clear how the Commission could make binding decisions regarding Staff’s proposed Phase 1 issues while reserving other issues for Phase 2. For example, the “capacity payment methodology” issues that Staff scoped for Phase 1 cannot be separated from the “capacity price” issues scoped for Phase 2, and in some cases the issues appear to be identical in Phases 1 and 2. More broadly, it is neither possible nor desirable to make decisions regarding aspects of the avoided cost price in a piecemeal fashion because it is important to understand how the pieces fit together and to consider whether

⁵ Docket UM 2000, Staff’s Process Proposal and Scope at 2 (“Staff proposes a phased approach that first addresses threshold issues through commission decision at a public meeting.”).

the *overall* avoided cost price complies with PURPA and holds customers indifferent to the purchase of QF generation.

Overlap issues aside, the Joint Utilities do not consider it feasible for the Commission to resolve Staff's proposed Phase 1 issues in less than six months, as Staff's proposal envisions. Staff proposes to address five major issues in Phase 1: Pricing approach, standard price options, standard pricing terms, energy price methodology, and integrated resource plan (IRP) planning assumptions.⁶ These are major issues that, in the past, have required significant time to resolve.⁷ Six months is simply not enough time to allow for robust and sufficient discussion via workshops and written comments. Moreover, it would be inappropriate for the Commission to resolve most of the issues in Phase 1 without a full evidentiary record, which would be impossible to develop on the accelerated Phase 1 timeline Staff contemplates.

At the workshop, QF representatives remarked generally that a contested case is expensive and time consuming and expressed a preference for a more informal process. But the Commission should not decline to use the contested case process on this basis. First, it is not clear that contested cases inherently take longer than other processes, given that rulemakings and non-contested investigations can take several years and involve significant process.⁸ Further, while the Joint Utilities recognize that Staff and all stakeholders—including the utilities themselves—have finite resources and many competing priorities, the Joint Utilities maintain that it would be inappropriate and inadvisable to attempt to overly expedite or simplify the complex and important issues in this

⁶ Docket UM 2000, Staff's Process Proposal and Scope at 2-3.

⁷ See, e.g., Docket UM 1610 Phase 1, which began with parties submitting lists of proposed issues on October 3, 2012, and concluded approximately 17 months later with a Commission order on February 24, 2014, addressing several aspects of the avoided cost price methodology that will be revisited in docket UM 2000.

⁸ See, e.g., *In re Rulemaking to Address Procedures, Terms, and Conditions Associated with Qualifying Facilities Standard Contracts*, Docket AR 631 and *In re Public Utility Commission of Oregon, General Capacity Investigation*, Docket UM 2011.

case in an effort to avoid a contested case process. When an issue under Commission investigation is both fact-specific and critical to maintaining just and reasonable customer rates—as the issue of avoided cost clearly is—the Commission has a duty to ensure that its policy is sound.

Moreover, if the Commission adopts new policies on avoided cost pricing that are based on inaccurate assumptions or outdated methodologies and, as a result, avoided cost prices fall out of step with actual price trends, the Commission can expect to see stakeholders petitioning to reopen the issues in this docket sooner rather than later. In short, a good record is critical to the durability of decisions in this docket.

B. The Commission should not preclude consideration of avoided cost methodologies that involve competitive solicitation results.

The Joint Utilities have not finally determined what avoided cost proposals and methodologies they will recommend in this docket. However, it is possible that one or more utilities may advocate for a methodology that includes the results of a competitive solicitation, an approach that has been used by some states for years. To be clear, the Joint Utilities are not currently contemplating an avoided cost methodology that *requires* QFs to participate in a request for proposals in order to obtain a PURPA contract, but rather are simply considering methodologies that leverage the results of competitive solicitations as part of the Commission determination of avoided cost, more generally.

At the scoping workshop, QFs seemed to argue that the Commission should preclude discussion of any avoided cost proposal that leverages the results of a competitive process as part of the Commission’s avoided cost methodology. The QFs appeared to argue that the Commission’s competitive procurement process does not comply with the Federal Energy Regulatory Commission’s requirements for using competitive solicitations as part of an avoided cost methodology. The Joint Utilities disagree with the QFs’ apparent legal position, and in fact

do not even understand this argument given the robust nature of the Commission’s competitive bidding rules.

However, the key point from the Joint Utilities’ perspective is that it would be premature to limit the scope of avoided cost methodologies that parties may propose in this docket based on any stakeholder’s broad assertions about whether that methodology is appropriate or not—in fact, the Joint Utilities understand that robust discussion of various avoided cost methodologies is precisely the point of the Phase 1 effort. Once parties present their avoided cost proposals, other parties should be given the opportunity to raise any legal concerns with those proposals. If it becomes apparent there is a threshold legal dispute that must be resolved before the proposal should be considered further, that dispute can be resolved through briefing before parties continue addressing the merits of any proposed methodology.

C. The Commission should not accelerate consideration of a hybrid solar + storage standard price stream.

At the workshop, QF advocates requested that Staff expedite consideration of an avoided cost stream for solar + storage QFs. The Joint Utilities support considering in this docket the appropriate prices, terms, and conditions for solar + storage QFs. However, the Joint Utilities disagree that this issue should be fast-tracked for two reasons. First, it would be inefficient to spend time developing a new avoided cost stream either before or at the same time as parties are considering sweeping changes to the avoided cost structure and methodology—including reconsidering the current differentiation of standard price streams for renewable and non-renewable QFs and by technology types. Second, as the Joint Utilities previewed at the workshop, incorporation of storage raises questions around when the storage will be dispatched and by whom, which not only affect the value of the QF output, but also require specific contract terms that will

need to be developed. For these reasons, the Joint Utilities do not support accelerating consideration of solar + storage pricing ahead of other issues in this docket.

III. CONCLUSION

The Joint Utilities appreciate the opportunity to comment on Staff's proposals for docket UM 2000 and look forward to working with Staff and stakeholders to develop an efficient and rigorous approach for resolving the important issues in this docket.

Respectfully submitted this 22nd day of December 2022,



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