

**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 OREGON
SOLAR + STORAGE INDUSTRIES
ASSOCIATION ON AMENDMENTS
TO RULES DATED NOVEMBER 23,
2022

I. INTRODUCTION

The Oregon Solar + Storage Industries Association (“OSSIA”) respectfully submit these Comments to the Oregon Public Utility Commission (“PUC”) regarding the Notice of Proposed Rulemaking Addressing Procedures, Terms, and Conditions Associated with Qualifying Facility (“QF”) Standard Contracts filed on November 23, 2022.

OSSIA has previously submitted comments and recommendations in the informal phase of this rulemaking. OSSIA previous comments have focused on the big picture of Public Utility Regulatory Policies Act (“PURPA”) development in Oregon and proposed a more holistic examination of QF policies that will better enable development. The below comments will address the first issue on the minimum delivery guarantee (“MDG”) from the Memorandum on Request for Comment from November 23, 2022.¹ Then the comments will address two issues from the cost of compliance statement along with a recommendation to reduce costs. Lastly, these comments will bring back some of the primary core principles and concerns from our previous comments and discuss their relevance to this rulemaking.

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

II. COMMENTS

A. Minimum Delivery Guarantee for Solar Resources

On the issue of what minimum delivery guarantee should be required for solar QF, OSSIA supports the evidence put forward by the QF Trade Associations regarding what other jurisdictions are using. There is no publicly available data that shows what percentage would be reasonable to use for solar resources. Many areas around the country do not utilize minimum delivery guarantees. Accordingly, looking to jurisdictions where a MDG is either required or optional seems to be a proper. Seeing as North Carolina has the highest level of solar QF installations of any state, it seems appropriate to consider their policies. While not empirical evidence, we feel it is persuasive data from a state with a successful QF development market with policies applicable to Oregon.

If a minimum delivery guarantee is going to be either mandatory or an option in Oregon, it should consider the components that are out of the developer's control. While the proposed amendment to OAR 860-029-0120(14)(d) does reduce the MDG on a pro rata basis for a few potential incidents, it does not cover everything. Notably if a solar facility is unable to deliver power due to weather variability, the developer faces financial penalties and potential power purchase agreement ("PPA") termination. A solar facility has no control over the weather, and to potentially set a MDG at 90% would allow for little space before a QF is hit with a financial penalty and potential termination. A developer cannot ensure that there is adequate sun 90% of the time.

OSSIA recommends that the Commission should continue to utilize the minimum availability guarantee ("MAG"), however if the Commission should choose to include a MDG on solar resources then it should implement a 70% threshold over 2 years guarantee to ensure QFs are not penalized for weather variability.

B. Cost of Compliance

OSSIA has two concerns with the cost of compliance section. The first relates to the cost of professional services related to this rulemaking, with a simple proposed solution. The second relates to the scope of analysis in the cost of compliance section.

Within the notice of proposed rulemaking, the cost of compliance section indicates that the proposed rules and amendments are not expected to increase the cost of professional services in order to comply with these rules. However, following the conclusion of this rulemaking, the utilities will submit revised standard contracts with the required edits from the rulemaking. In addition to the required edits, utilities routinely include additional changes to the standard contract with the required changes. These extra changes mean additional examination by professional services is necessary, thereby increasing the costs of compliance. Additionally, QF developers will need to understand the differences between the previous standard contract and the updated standard contract, which will again require consultation with professional services and increased costs.

In Order No. 05-584, the PUC stated, “We continue to adhere to the policy, as articulated in Order No. 91-1605, that standard contract rates, terms and conditions are intended to be used as a means to remove transaction costs associated with QF contract negotiation, when such costs act as a market barrier to QF development.”² Allowing for additional changes to the standard contract beyond those required by this rulemaking, do not remove transaction costs on QFs.

² In re Commission Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 05-584 at 15-16 (May 13, 2005).

To avoid these additional costs on QFs, OSSIA recommends that the commission direct the utilities to submit a narrowly tailored redline of the current standard contract. This redline should include the required changes resulting from this rulemaking but should exclude other changes. A red lined standard contract would significantly reduce the time to review proposed changes and the costs of reviewing changes.

Additionally, on the scope of analysis in the cost of compliance section, the notice of proposed rulemaking discusses the benefits of providing clear terms and conditions for standard contracts. While the rulemaking does make changes to several terms and conditions of standard contracts, some of the rules apply beyond standard contracts. For example, OAR 860-029-0005 states, “These rules apply to all interconnection, purchase, and sale arrangements between a public utility and facilities that are qualifying facilities as defined herein.”³ Additionally, -0010 provides definitions for all of Division 029. Section -0043 addresses standard avoided cost rates, not standard contracts. Similarly, Section -0045 addresses standard rates in addition to PPAs. Lastly, section -0122 expressly states that the force majeure provision will apply to every PPA.

C. Relevant Policy Considerations

OSSIA previously submitted a list of core principles and concerns which are relevant to this rulemaking. OSSIA continues to recommend those core principles and concerns and does not re-assert those here. Below we raise several of those principles for consideration with indications as to how they are even more relevant now and should be addressed through changes to rules in this docket.

³ Notice of Proposed Rulemaking Addressing Procedures, Terms, and Conditions Associated with Qualifying Facility Standard Contracts, Office of the Secretary of State, (November 23, 2022).

The first principle is that PURPA policies should work to create an investible framework. Policy decisions made in this docket, and generally on PURPA, should lead to a more stable, clear, understandable, and investable environment. Uncertainty, utility discretion, punitiveness, lack of accommodation for real world issues, and lack of holding the utilities accountable should be reduced. The passage of HB 2021 and the subsequent implementation at the PUC highlight the massive amount of electricity that the utilities will need to plan, procure, and construct. This considerable need for power highlights the increased need for PURPA policies that promote development of QFs.

The second principle is that the fixed price term should be extended to 25-30 years. The contract term should match the useful lifespan of the solar facility. Requiring QF's to renegotiate PPAs midway through the life of a solar facility needlessly increases costs on QF developers. As such, proposed rule OAR 860-029-0120(2) should be revised accordingly.

A third concern is that QF size eligible for a standard contract should be increased to 20 MW. As the two largest public utilities are now preparing their Clean Energy Plans, they are planning for a tremendous amount of energy. A standard contract is meant to reduce transaction costs on QF developers and setting the size of a QF eligible for a standard contract to a higher level reflects Oregon's commitment to reduce emissions by 2030, 2035, and 2040. This policy change would greatly increase the ability for QF developers to enter the market and help utilities meet their climate goals. QFs are not small projects only, the 80 MW size in 1978 was quite large. PURPA is explicitly intended to allow projects of a meaningful scale. Increasing the size eligible for a standard contract would create additional options for QF developers to scale their projects and promote a healthier market. As such, proposed rule OAR 860-029-0045(2) should be revised accordingly.

A fourth concern is that the size threshold for solar QFs eligible for standard avoided cost rates should also be increased to mirror the standard contract eligibility size. Currently, solar QFs of only 3

MW in size or smaller are eligible to receive standard avoided cost rates, whereas QFs of other types may be up to 10 MW. For the same reasons that the standard contract eligibility threshold should be increased, the standard avoided cost rate eligibility threshold should also be increased. As such, proposed rule OAR 860-029-0045(1) should be revised accordingly.

Lastly, QFs should be enabled to provide resilience power to local systems. Communities throughout Oregon increasingly want to receive local benefits from QF projects sited near them. For example, picture a solar project located near a community at the end of a long transmission line. While that project might transmit its output to a more distant utility under a PURPA standard contract, when that transmission line is out due to a low-frequency, high-consequence event (e.g., extreme storm or fire), the solar facility should have the option to make “resiliency sales” to the local utility of its nearby community. The facility may be unable to deliver during that period to the more distant utility and sitting idle, meanwhile the community could be experiencing a blackout. Making a change to the standard contract to allow QFs the option to provide resilience power to local communities would promote resilience in rural communities by keeping the lights on and provide additional options for developers.⁴ In light of HB 2021 and the thrust towards creating and facilitating more resilient communities and power systems, enabling these “resiliency sales” in the PURPA standard contracts will help further those goals.

III. CONCLUSION

OSSIA strongly recommends that the Commission continue using the MAG, but if they move to an MDG that it should be set at a 70% threshold. OSSIA also recommends requiring utilities to submit a redline of the current standard contract to incorporate the required changes to the standard contract,


⁴ While there may be other technical limitations to a QF providing resilience power to local communities, this action would be a big step towards increasing resilience and remove one of the obstacles preventing this option.

thereby reducing costs of professional services. Lastly, OSSIA recommends this rulemaking make changes to the rules that improve the standard contract including extending the duration of the contract term, increasing the MW size eligible for a standard contract, increasing the size eligible for standard avoided cost rates for solar QFs, and enabling QFs to provide resilience power to local communities. OSSIA appreciates the opportunity to provide these responsive comments and look forward to continued participation in this rulemaking.

Thank you for your attention to these comments.

Dated this 20th day of December 2022.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack R. Watson".

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