

February 28, 2020

Chief Administrative Law Judge Nolan Moser

Re: AR 629 – Joint Utilities’ Comments on Scoping Memorandum

ALJ Moser:

PacifiCorp, dba Pacific Power, Portland General Electric Company, and Idaho Power Company (together, the Joint Utilities) submit these comments on the draft Public Meeting Memorandum addressing the scope of docket AR 629 provided by Chief Administrative Law Judge (ALJ) Nolan Moser on February 21, 2020 (hereinafter, the Scoping Memo).

The Joint Utilities agree with the overall recommendation that the Commission broaden the scope of the docket to explicitly address reforms to the complaint process as it applies to complaints under the Public Utility Regulatory Policies Act (PURPA), in addition to developing a framework for alternative dispute resolution. The Joint Utilities recommend, however, that the Proposed Commission Motion be slightly revised, to communicate that the expanded scope of docket AR 629 is not limited to reforms that will serve to *simplify* the complaint procedures for PURPA complaints, but rather will be broad enough to consider improvements to the PURPA complaint process generally, including the process for complex and substantial PURPA complaints.

While Joint Utilities agree that some Qualifying Facility (QF) complaints can be addressed through a simplified process, we believe that the vast majority of PURPA complaints involve complex issues or substantial financial impact, warranting all the protections and process normally afforded parties during the Commission complaint process (discovery, written testimony, motions practice, hearing, and legal briefs). For most complaints, then, the best solution for efficient and effective resolution is a more robust case-management process. For example, early and more involved prehearing conferences can be used to: (a) identify the legal and factual issues in dispute; (b) identify prehearing motion practice—such as motions for judgment on the pleadings or summary judgment—that can potentially narrow the scope of the case; (c) establish discovery timelines; and (d) allow the ALJ to understand the nature and extent

of the process that will be required for resolution. In addition, when there are disputes that can be resolved with a simplified process, those cases can be identified early on through this robust case-management process. Therefore, the Joint Utilities recommend that the Commission consider developing a more detailed process that imparts greater structure on the complaint procedures generally similar to the case-management process established by the federal rules of civil procedure.

Consistent with the above comments, the Joint Utilities offer the following limited revisions to the Scoping Memo to clarify both the current and potentially expanded scope of the docket.

First, the Joint Utilities recommend a clarification of the Issue so that it reads as follows:

Whether the Commission should expand the scope of issues to consider in docket AR 629 beyond developing rules for alternative dispute resolution process.

This proposed edit will clarify that to date the docket has focused primarily on *alternative* dispute resolution and to distinguish dispute resolution generally (which encompasses the complaint process) from alternative dispute resolution (which has so far focused on the pre-complaint process).

Second, the Joint Utilities recommend modest edits to the Proposed Commission Motion to clarify that the expanded scope will generally address proposed improvements to the PURPA complaint process, including case management tools that will benefit both complex and simpler complaints. This clarification will enable stakeholders to also propose rules that would provide more robust case management procedures, consistent with the Joint Utilities' prior recommendation in this docket.¹ Specifically, the Joint Utilities recommend that the Proposed Commission Motion read as follows:

Adopt AHD's recommendation to expand the scope of AR 629 to address revisions to the include rules for simplified complaint procedures for PURPA complaints.

This revision will make clear that the Joint Utilities' recommendation for an expanded case management process is within the expanded scope of the docket.

Third, the Joint Utilities recommend that the Scoping Memo not imply that the proposed rules themselves will prescriptively identify specific types of cases that could be subject to a streamlined, or simplified, complaint process. After discussing several proposals to streamline and/or simplify the complaint process the Scoping Memo states:

Stakeholders may agree that some or all of the above options are appropriate in certain circumstances – however deciding when and

¹ See Joint Utilities' Response Comments at 5-6 (Jan. 23, 2020).

how to utilize these tools will require considerable discussion and review. Not all disputes will warrant streamlined procedures, and the rules will need to include a mechanism that can be utilized to determine how certain disputes will be streamlined. Accordingly, the following questions will need to be addressed when considering how to establish when streamlined processes are appropriate.²

This paragraph could be understood to suggest that in docket AR 629, stakeholders will work to identify rule provisions that would be applied to cases at the outset to determine whether a particular case receives a simplified process. As discussed above, such a determination must be made on a case-by-case basis and the most efficient way to do so is through a robust case-management process with enhanced scheduling conferences early on in the case. The Joint Utilities recommend that the above-referenced paragraph be revised to read as follows:

Stakeholders may agree that some or all of the above options are appropriate in certain circumstances – however deciding when and how to utilize these tools will require considerable discussion and review. Not all disputes will warrant streamlined procedures, and such a determination should be made on a case-by-case basis. The rules will need to include a process mechanism that can be utilized to determine if and how certain disputes will be streamlined, without prescriptively identifying categories of disputes that will automatically be subject to a streamlined process. Accordingly, the following questions will need to be addressed when considering how to establish when streamlined processes are appropriate.

In the event the ALJ believes the precise mechanism for case evaluation should remain open for discussion, the Joint Utilities recommend that Scoping Memo note this as an issue the parties will address during workshops without identifying a specific approach or conclusion on whether the rules themselves must “include a mechanism that can be utilized to determine how certain disputes will be streamlined.”³

Fourth, the Joint Utilities recommend that the Conclusion include a specific recommendation for ongoing stakeholder workshops to allow development of the issues that will be addressed in the expanded scope. It appears that this was the intent, but the Joint Utilities recommend that it be explicit.

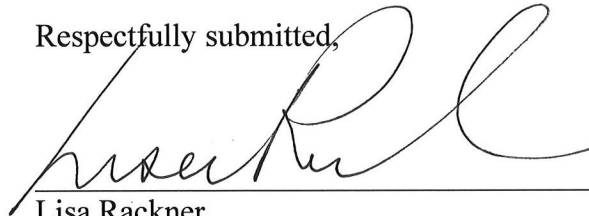
Fifth, the Joint Utilities recommend that the Scoping Memo include a specific timeline for submission of comments on the Scoping Memo (preferably no later than March 6) so that stakeholders may have adequate time to prepare for the Commission Public Meeting on March 10, 2020, .

² Scoping Memo at 5.

³ *Id.*

The Joint Utilities appreciate the opportunity to file these comments and support the Scoping Memo's recommendation to expand the scope of docket AR 629. Reforms to the complaint process are critical to the effort to efficiently process QF disputes but should not be limited to only simplifying procedures.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lisa Rackner', written over a horizontal line.

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