McDOWELL RACKNER GIBSON PC
419 SW 11th Ave, Suite 400 | Portland, OR 97205

JENNIFER MILLER
Direct (503) 595-3927
jennifer@mrg-law.com

March 30, 2021

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, Oregon 97308-108

Re: AR 631 – Procedures, Terms, & Conditions Associated with QF Standard Contracts

Attention Filing Center:

Attached for filing in the above-captioned docket is Joint Utilities' Initial Comments in Response to Staff's Proposal.

Please contact this office with any questions.

Thank you,

Jennifer Miller
Legal Assistant

Attachment(s)

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AR 631

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Rulemaking to Address Procedures, Terms, and Conditions Associated with Qualifying Facilities Standard Contracts.	**JOINT UTILITIES' INITIAL COMMENTS IN RESPONSE TO STAFF'S PROPOSAL**

Portland General Electric Company (PGE), PacifiCorp dba Pacific Power (PacifiCorp), and Idaho Power Company (together, the Joint Utilities) respectfully submit these initial comments in response to Staff's proposal filed on January 15, 2021, which recommends changes to the Public Utility Regulatory Policies Act of 1978 (PURPA) contracting process and the terms for standard Power Purchase Agreements (PPAs) with Qualifying Facilities (QFs). The Joint Utilities appreciate the discussion of Staff's proposal at the March 2, 2021 workshop, and the opportunity to provide these written comments. In these comments, the Joint Utilities note areas of agreement and disagreement with Staff's proposal, highlight provisions that require further clarification, and submit their own recommendations regarding standard PPA terms and contracting requirements.

The Joint Utilities applaud Staff's efforts to balance the interests of utility ratepayers and QFs. Importantly, however, the outcome of this docket must adhere to PURPA's customer-indifference standard, which requires that utility customers remain financially indifferent to QF development.[1] While many of the Staff's proposals further this objective, some provisions fall

[1] *See, e.g.*, *In the Matter of Portland Gen. Elec. Co.*, Docket UM 1894, Order No. 18-025 at 7 (Jan 25, 2018) ("[O]ne critical feature of our implementation of PURPA, including (but not limited to) the terms and conditions of our regulated PURPA contracts, is the need to ensure that ratepayers remain financially indifferent to QF development."); *In the Matter of Staff's Investigation Relating to Electric Utility Purchases from Qualifying*

(continued...)

short of ensuring customer indifference and thus require modification.

In general, the Joint Utilities believe there are more opportunities in this docket to modernize the standard PPAs and align them more closely with market bilateral PPAs and current industry practices and requirements. Many developers of Oregon standard QFs have experience developing utility-scale renewable energy resources and participating in the bilateral market. The Joint Utilities encourage Staff to consider adopting terms that are more aligned with market-based PPAs, examples of which are those included in PacifiCorp's recent 2020 all-source request for proposals solicitation;[2] the standard contract recently agreed upon by PacifiCorp, the Northwest & Intermountain Power Producers Coalition (NIPPC), and the Renewable Energy Coalition (REC) in Washington;[3] and Idaho Power's contract with Jackpot Holdings, LLC for the sale and purchase of renewable solar generation in Idaho.[4]

The Joint Utilities also recommend that Staff consider broadening the scope of issues addressed in this docket and including actual contract language. In docket UM 1987, PGE has been seeking to update its standard PPA for over two years. PacifiCorp and Idaho Power also see the need to modernize their Oregon standard PPAs. The recent agreement reached between PacifiCorp, NIPPC, and REC in Washington—which notably included an entire form standard contract for all QFs of 5 MW or less—demonstrates that the parties are able to address a broader range of issue in greater detail and reach consensus on those issues. Broadening the scope of issues addressed and including actual contract language would be beneficial both in minimizing disputes

Facilities, Docket UM 1129, Order No. 05-584 at (May 13, 2005) ("We seek to provide maximum incentives for the development of QFs of all sizes, *while ensuring* that ratepayers remain indifferent to QF power by having utilities pay no more than their avoided costs.") (emphasis added).

[2] *See* https://www.pacificorp.com/suppliers/rfps/all-source-rfp html.

[3] *See* Washington Utilities and Transportation Commission (WUTC), Docket UE 190666.

[4] *See* Idaho Public Utilities Commission (IPUC), Case No. IPC-E-19-14.

over compliance filings after the rulemaking is completed and in reducing or eliminating the need for further proceedings to modernize and update the standard PPAs.

These comments first address each of Staff's proposals in the order presented in Staff's Letter to Participants[5] and then discuss the Joint Utilities' recommendations regarding additional issues.

A. Eligibility for Draft Standard PPA to Begin Contracting Process

Staff proposes that the utility be required to deliver a draft standard PPA to an eligible QF when the facility has: (1) filed a request for interconnection with the host utility or appropriate transmission provider; (2) provided evidence of site control; and (3) provided required information regarding the facility (information requirements to be approved by the Commission).[6] Staff explains that these requirements are intended to minimize the likelihood of bottlenecked PPA contracting processes at the conclusion of a PacifiCorp cluster study or for any utility when changes in avoided cost prices are imminent.[7] To the extent that this requirement means utilities will begin the contracting process with developers that ultimately do not execute standard PPAs, Staff asserts that this concern is outweighed by the need to minimize bottlenecked PPA contracting processes.[8]

Regarding the first requirement, the Joint Utilities appreciate Staff's recognition that it is important for a QF to show progress towards achieving interconnection in order to be eligible for a draft standard PPA. However, the Joint Utilities disagree that a simple request for interconnection

[5] Docket AR 631, Staff Letter to Participants at 3 (Jan. 15, 2021).
[6] *Id.*
[7] *Id.*
[8] *See* Staff Letter to Participants at 3. The Joint Utilities note that they are unclear what specific "concern with bottlenecked PPA contracting processes" Staff is referring to in its proposal. In addition, the Joint Utilities do not necessarily agree that bottlenecks are likely to occur or that Staff's proposed changes to the eligibility requirements address the stated goal of preventing bottlenecks.

by a QF demonstrates a sufficient commitment by the QF to the contracting process to serve as the prerequisite for receiving a draft standard PPA. Instead, the Joint Utilities urge Staff to require that a QF provide either (i) written confirmation from the interconnection provider that no interconnection study is required or (ii) proof that the QF has entered into an interconnection study agreement for either the cluster study or the first interconnection study in the interconnection process, as applicable, and has paid the requisite study fees.

These steps are within the QF's control, are not burdensome, and objectively and reasonably demonstrate that the QF developer is serious about developing the project. In the same way that requiring a QF to obtain site control demonstrates at least some financial commitment to the project, entering into a study agreement and paying applicable fees is a key step in the early development process. Such requirements should thus be required of all QF developers seeking to obtain a draft PPA in order to demonstrate that the proposed project is not speculative. Finally, as explained in detail in Section B, the Joint Utilities' support of changes to the interconnection-related PPA-eligibility requirements is conditioned upon the adoption of contractual provisions that will ensure customers remain indifferent if the QF later receives an interconnection study indicating that the facility is not able to interconnect by the scheduled Commercial Operation Date (COD).

Regarding the second eligibility requirement, the Joint Utilities agree with Staff's proposal related to site control, which is consistent with current practice.

With respect to Staff's third eligibility requirement, the Joint Utilities recommend preserving the information requirements previously approved by the Commission. Specifically, the Joint Utilities urge Staff to recommend that the Commission adopt the specific informational

requirements set forth in PacifiCorp's current Standard Avoided Cost Rates tariff, Section I.B.2., Qualifying Facilities Contracting Procedure; Process for Completing a Power Purchase Agreement,[9] with the following additions:

a) Any QF that is required to file a Form 556 with the Federal Energy Regulatory Commission (FERC) should be required to serve the form on the purchasing utility in accordance with the FERC rules, and to demonstrate that the facility described in its FERC Form 556 is identical in all material respects to the project for which the QF requests a draft PPA.

b) The QF should be required to include specific data on latitude/longitude and site layout plans as part of the facility's site location information so that the utility may evaluate consistency with FERC's same site rule and Oregon's five-mile rule. QFs routinely provide this information to the utilities, and the requirement should be formalized for clarity.

c) The QF should be required to provide a 12x24 power delivery schedule.

d) The QF should be required to identify the distribution line or substation where its point of interconnection and point of delivery are located, including the specific latitude/longitude of the point of interconnection and point of delivery, so that the utility may review the identified locations for consistency with the QF's interconnection request and prepare the request for transmission service.

e) The QF should be required to provide evidence that it is a creditworthy counterparty or otherwise demonstrate that it is able to provide the security required under the standard PPA.

[9] https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Standard_Avoided_Cost_Rates_Avoided_Cost_Purchases_From_Eligible_Qualifying_Facilities.pdf.

f) For a QF that includes a battery storage system, the QF should be required to clarify the storage system design capacity and to describe the storage system duration and net power output, so that the utility can understand the specifics of the entire facility. The QF should also be required to include a description of the technology used by the battery storage system, so that any defined operating parameters and performance guarantees specified in the draft PPA are reflective of the specific technology.

Finally, the rules should clarify that the 15-business-day timeline for delivering a draft PPA begins after the utility has received all of the required information from the QF in writing.

B. Eligibility for Executable Standard PPA

Staff proposes that a QF seeking an executable standard PPA must meet four eligibility criteria: (1) the QF must have satisfied the informational requirements described in the tariff for obtaining a draft standard PPA; (2) no additional revisions to the draft standard PPA are requested or needed; (3) the QF has submitted a written request for a final executable standard PPA; and (4) the QF has met certain interconnection milestones that vary by utility.[10] Specifically, for PacifiCorp, Staff's proposal requires that the QF has received a Cluster Study indicating interconnection within four years is possible, but would excuse the QF from this study requirement if PacifiCorp Transmission has not issued a Cluster Study by January 1 of the calendar year following the QF's participation in a Cluster Study.[11] For PGE and Idaho Power, Staff's proposal requires that the QF has received a System Impact Study (SIS) indicating interconnection within four years is possible, but would excuse the QF from this study requirement if six months have

[10] Staff Letter to Participants at 3.
[11] Staff Letter to Participants at 3.

passed since the QF executed the SIS agreement.[12]

Assuming that the changes described in Section A above regarding Staff's proposed informational requirements for eligibility for a draft standard PPA are adopted, the Joint Utilities support Staff's proposed eligibility requirements (1) through (3) for an executable standard PPA, which are generally consistent with current practice.

With respect to Staff's proposed eligibility requirement (4), the Joint Utilities appreciate that Staff's proposal reflects the importance of confirming the reasonableness of the scheduled COD proposed by the QF as part of a utility's customary due diligence for any PPA, whether it be a QF PPA, non-QF PPA, or other resource procurement. Such due diligence helps the utility ensure that the QF has a viable, commercially reasonable project before it enters into a 20-year commitment that the utility relies upon in making resource planning decisions. The Joint Utilities understand that excusing the QF from the interconnection-study requirement—in the event completion of the interconnection study by the purchasing utility's interconnection provider is delayed—addresses QF concerns regarding the formation of Legally Enforceable Obligations (LEOs) under this Commission's LEO rules.[13]

However, the Joint Utilities have several concerns and recommendations regarding Staff's proposed interconnection milestones, and the Joint Utilities' support of Staff's proposal is conditioned on adoption of the Joint Utilities' recommendations and proposed changes described below. The Joint Utilities' first concern with Staff's proposal is that it would allow a QF to execute a standard PPA if its interconnection study supports a scheduled COD within a four-year

[12] *Id.*
[13] *In the Matter of the Public Utility Commission of Oregon Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket UM 1610, Order No. 16-174 at 3 (May 13, 2016).

timeframe. As discussed in detail below in Section E, the Joint Utilities are concerned about the harm to customers that would result from allowing QFs to lock in avoided cost prices four years or more in advance of coming online. The Joint Utilities recommend revising Staff's proposal to require that the interconnection study support a scheduled COD within a three-year timeframe.

Second, Staff's proposal should apply only to on-system QFs—for which the interconnecting utility and the purchasing utility are the same—because the proposal fails to fairly balance the allocation of risk for off-system QFs. Where a delay in the interconnection study process is caused not by the purchasing utility, but by a third-party interconnection provider, the delay is entirely outside the purchasing utility's control, and the QFs' concerns regarding the purchasing utility impeding establishment of a LEO do not apply. In such a situation, the purchasing utility's customers should not be required to enter a potentially speculative PPA with the QF before the QF knows when it can interconnect and if that date reasonably qualifies the QF for the standard avoided cost pricing in place at the time. Instead, it is appropriate for the QF who elected to locate the project remotely and interconnect with a utility other than the purchasing utility to wait until its ability to interconnect is confirmed before executing a PPA. At the workshop, Staff acknowledged that different circumstances apply to off-system QFs, but seemed to suggest that there are relatively few off-system QFs. In reality, approximately 300 MW, or 60 percent, of the QF output currently online or contracted for purchase by PGE is generated by off-system QFs with whom PGE is not directly interconnected. The Joint Utilities recommend that off-system QFs be required to produce an interconnection study demonstrating their proposed COD is reasonably achievable before receiving an executable PPA.

Third, with respect to PacifiCorp's interconnection cluster study process and Staff's

proposal to excuse the interconnection-study requirement for QFs to receive an executable standard PPA if the Cluster Study is delayed beyond January 1 of the following calendar year, the January-1 date should be extended. To the extent that the purpose of the date-certain alternative is to provide the QF with an opportunity to establish a LEO before standard avoided cost pricing changes, and pricing changes are made on pre-determined dates, PacifiCorp suggests that the date on which the QF is excused from providing the required interconnection study occur closer in time to the annual pricing update—for example, two weeks before the annual update. Delaying Staff's proposed date for excusing the QF from this obligation will maximize the opportunity for QFs and utilities to account for interconnection study results before contracting—particularly in cases where restudies are required due to participants dropping out, which is something PacifiCorp does not control—and will not compromise the QFs' ability to seek a LEO under the Commission's current LEO rule. For these reasons, PacifiCorp recommends that the date certain be extended to a date that is closer in time to the effective date of the next annual pricing update.

Finally, the Joint Utilities' support of Staff's proposal is conditioned upon adoption of contractual provisions to address issues that are likely to arise if a QF receives an executable PPA before its interconnection study results are available and to ensure that a QF is subject to avoided cost pricing approved by the Commission as "just and reasonable" to the Joint Utilities' customers.[14] For example, if the study results, once completed, do not support the scheduled COD specified in the PPA or otherwise do not support interconnection within the required timeframe (calculated from the date on which the QF signs the PPA), the PPA should provide for termination with damages or updated pricing. Such provisions in a standard PPA are critical to ensuring the

[14] PURPA Section 210(b) (16 U.S.C. § 824a-3(b)); *see also* OAR 860-029-0040(1)(a).

Joint Utilities' retail customers are held indifferent to the purchase of QF output, as required by PURPA.

Accordingly, the Joint Utilities support Staff's proposed interconnection study requirement in concept, conditioned on further examination and development of the issues identified above.

C. Avoided Cost Updates

Staff proposes to limit updates to standard avoided cost prices to once a year, on a specific date, *i.e.*, a February 1 filing date with price changes becoming effective on March 15.[15] Under Staff's proposal, any changes to avoided cost inputs after Integrated Resource Plan (IRP) acknowledgment would be included in the next annual update filing, rather than in an update filed 30 days after IRP acknowledgment.[16] If no IRP acknowledgment has occurred in the last 12 months, the March 15 update would be limited to factors currently specified in OAR 860-029-0085 for the May 1 annual update.[17] Staff appears to propose that the current rule regarding avoided cost updates following a significant change should be eliminated.[18]

The Joint Utilities understand that Staff's proposal reflects an attempt to provide more financial certainty for QFs and, in PacifiCorp's case, to align pricing updates with cluster study participation and processes. However, it is unclear how Staff's proposal to eliminate post-IRP and significant-change avoided cost updates supports the requirement that rates must be "just and reasonable to the public utility's customers."[19] The pricing update that utilities submit following IRP acknowledgement is critical to ensure that avoided cost pricing uses the most current data on

[15] Staff Letter to Participants at 4.
[16] *See id.*
[17] *Id.*
[18] OAR 860-029-0085(5).
[19] OAR 860-029-0040(1)(a).

capacity contribution, capacity costs, and deficiency period. Without this update, it is highly likely that utilities would be entering into contracts that do not accurately reflect the current cost of the avoided resource.[20] Similarly, the significant-change update option should be retained to ensure that avoided costs can be updated if a significant change in circumstances means that they are no longer accurate. Accordingly, the Joint Utilities propose that there be no changes to the current avoided cost update process and requirements.

If Staff's proposal for annual-only avoided cost updates continues to be considered, such discussion should occur within the scope of docket UM 2000, which will examine alternative methodologies for calculating PURPA avoided cost prices and potentially other related issues.[21] Staff's proposal to set the date for annual avoided cost updates to February 1 (with an effective date of March 15) should also be considered in docket UM 2000.[22] Any changes to the Commission's avoided cost methodology that are adopted in docket UM 2000 may impact the timing and process for avoided cost updates. It does not make sense to change the Commission's rules regarding avoided cost updates in docket AR 631 when the rules may need to be reexamined and revised following docket UM 2000. Moreover, piecemeal examination of avoided cost issues in separate dockets is inefficient and creates the risk of inconsistent results and overpayment for QF generation, contrary to PURPA's customer-indifference mandate. The Joint Utilities strongly recommend that all issues related to avoided cost pricing be addressed in docket UM 2000.

[20] As discussed below, the Joint Utilities note, as an example, PacifiCorp's post-IRP update effective on August 26, 2020, with the most up-to-date capacity contribution information, resulted in a 45 percent reduction in the avoided cost pricing for tracking solar resources, calculated on a net present value basis over the term of 15 years.
[21] *In the Matter of Public Utility Commission of Oregon Request to Adopt a Scope and Process for the Investigation into PURPA Implementation*, Docket UM 2000, Order No. 19-254, App. A at 28-29 (July 31, 2019).
[22] PacifiCorp notes that its recently implemented interconnection queue reform and cluster study process may require a change in timing of its annual avoided cost updates to align more closely with the timing of the cluster study process and believes that docket UM 2000 is the appropriate docket in which to more fully examine this issue.

D. Contracting Timelines

Staff proposes retaining the 15-business-day timeline for a utility to provide a draft standard PPA or request missing information.[23] However, Staff proposes reducing the timeframe within which a utility must deliver an executable standard PPA following a written request from the QF to 10 business days if the QF has received an interconnection study (either cluster study or SIS, as applicable).[24] Staff explains that "details should be honed down by the time of the interconnection study results" such that the utility should not need 15 business days.[25] Staff also notes "it is important to recognize the clock ticking down to the next avoided cost update."[26] Staff's proposal does not address the situation where the utility is required to provide an executable standard PPA to a QF that has not yet received a cluster study or SIS. The Joint Utilities assume that Staff intends to retain the current requirement that the utility provide the executable standard PPA 15 business days after receiving the QF's written request in such circumstances but request that Staff confirm or clarify its proposal.

The Joint Utilities disagree with Staff's proposal to shorten the timeline for providing an executable standard PPA to 10 business days after an interconnection study is complete. In the Joint Utilities' collective experience, 15 business days is a reasonable timeline for preparing and reviewing an executable standard PPA, collecting all of the necessary data for PPA exhibits, and performing a final check to confirm that all the QF's documents are complete and accurate.

[23] Staff Letter to Participants at 4-5.
[24] *Id.*
[25] *Id.*
[26] *Id.*

E. Time to Construct Facility (interval between PPA execution and scheduled on-line date)

Staff recognizes the Commission's current policy that a QF has a unilateral right to select a scheduled COD up to three years after PPA execution and the Commission's underlying concern that delaying scheduled COD beyond three years can lead to stale avoided cost prices.[27] However, Staff proposes that if a QF's interconnection study shows an interconnection completion date more than three years after PPA execution, but within a four-year window, the QF should be allowed the unilateral right to select a scheduled COD up to four years after PPA execution.[28] For every month in the interval between PPA execution and the scheduled COD that is beyond three years, the fixed-price term will be shortened.[29] For example, if the scheduled COD is three years and six months after PPA execution, the fixed-price term will be shortened from 15 years to 14 years and six months.[30] The Joint Utilities understand that under Staff's proposal, the fixed-price term would begin on the scheduled COD and the overall PPA term would be shortened by the same amount of time as the fixed-price term,[31] but the Joint Utilities would appreciate Staff confirming these aspects of its proposal.

Staff explains that allowing a QF the unilateral ability to select a scheduled COD more than three years after PPA execution if more time is needed for interconnection will reduce litigation

[27] Staff Letter to Participants at 5; *see also In the Matter of Investigation Into Interim PURPA Action*, Docket UM 2001, Order No. 19-074 at 3-4 (Feb 20, 2019) (adopting "enhanced" avoided cost updates to ensure standard avoided cost prices meet the customer indifference standard); Docket UM 2000, Order No. 19-051, App. A at 3 (Feb. 19, 2019) (Staff recognizing that "potential harm to ratepayers from long-term contracts at prices that are higher than actual avoided costs is significant").
[28] Staff Letter to Participants at 5.
[29] Staff Letter to Participants at 5.
[30] *Id.*
[31] *Id.* ("contract term is the same length as [it] would have been if scheduled on-line date had been three years from contract execution").

and mitigate the incentive for utilities to "game" the interconnection process.[32] Staff asserts that its proposal will not harm customers because the contract term is the same as it would have been if the scheduled COD had been three years from contract execution.[33] Staff also proposes that if a scheduled COD is not possible within four years of PPA execution, the QF must wait to execute a PPA until the scheduled COD is within a four-year window.[34]

While the Joint Utilities appreciate Staff's effort to seek balance between a QF's desire to expedite contracting and reduce uncertainty and the utilities' desire to protect customers from the risks inherent in stale avoided cost prices, the Joint Utilities respectfully contend that Staff's proposal puts undue risk on customers by seeking to create a solution for QFs that PURPA does not require and mitigate a risk (*i.e.*, "gaming" of the interconnection process) that does not exist. The current three-year rule, as codified in OAR 860-029-0120, was agreed upon by stakeholders by stipulation filed with and adopted by the Commission in docket UM 1610.[35] Staff has not provided a rationale for upsetting the negotiated balance previously struck by the utilities and stakeholders that is reflected in the current rule. This rule is also consistent with market PPAs. Of the 21 non-QF, market-based PPAs PacifiCorp has executed since 2010, none of them contained a time-to-construct period longer than three years.

Staff's proposal is flawed because it assumes that the harm to customers due to stale prices is equal to the customer savings resulting from reduction of the fixed-price term, but this is not necessarily true. Fourteen years and six months of stale pricing could be far worse for customers than 15 years of accurate, current pricing that reflects the up-to-date cost of the avoided resource.

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[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *See* OAR 860-029-0120(4); Docket UM 1610, Order No. 15-130 (Apr. 16, 2015).

For example, as shown in Attachment A to these Comments, the net present value of the amount PacifiCorp would have paid for 1 MW of 14.5 years of power from a tracking solar resource at PacifiCorp's 2020 standard avoided cost prices in effect before its August 26, 2020 post-IRP update is $1.1 million. The net present value of the amount PacifiCorp would have paid for 1 MW of 15 years of power from the same tracking solar resource at PacifiCorp's 2020 refreshed standard avoided cost prices in effect after PacifiCorp's August 26, 2020 post-IRP update is $0.6 million. In other words, 15 years of refreshed pricing represents a *45 percent reduction* in the cost per MW to PacifiCorp's customers, as compared to 14.5 years of stale pricing. Accordingly, Staff's assumptions regarding the impact or lack thereof on customers resulting from stale pricing are not accurate.

Finally, the Joint Utilities propose that the cure period for failure to timely achieve scheduled COD should be reduced to three months. The current one-year cure period is 9-12 months longer than most negotiated cure periods in market-based PPAs and significantly longer than the cure periods applicable to QF standard PPAs in other states.[36] Any adjustments to the current three-year construction period or one-year cure period should serve to more closely align PURPA standard PPAs with market-based contract terms. To achieve this result, the three-year limit should be retained, and the cure period should be reduced to three months. Any project that requires more time is unnecessarily speculative and puts customers at undue risk of paying prices that are stale and not reflective of actual avoided costs. This is not a theoretical problem. Of the 22

[36] For example, the standard PPA for PacifiCorp's Washington QFs provides for a cure period of up to 180 days but not to exceed the third anniversary of the execution date for the PPA and only so long as the QF complies with a detailed schedule recovery plan approved by PacifiCorp; provided, however, if the QF does not comply with the schedule recovery plan, the QF has 30 days to cure its default. Also, in Utah, PacifiCorp has entered into standard PPAs that provide for a 15-day cure period, and in Wyoming, PacifiCorp has entered into standard PPAs that provide for a 90-day cure period.

standard PPAs executed by PacifiCorp within the last ten years, 32 percent achieved COD more than three and a half years after PPA execution. For standard PPAs executed by PGE since 2010, 24 percent of the projects that achieved COD did so more than three and a half years after PPA execution. Due to the one-year cure period, the utilities were not able to refresh pricing for these QFs.

In sum, the Joint Utilities strongly oppose Staff's proposal to lengthen the period between PPA execution and scheduled COD to as long as four years and six months. Even the current rule allowing the scheduled COD to occur up to three years from the date the PPA is executed, combined with the one-year cure period, can result in stale pricing that may disadvantage customers. Extending this period to four years, even if the cure period is reduced to six months (as proposed by Staff) or three months (as proposed by the Joint Utilities), exacerbates this problem.[37] Therefore, the Joint Utilities advocate for maintaining the existing three-year limit.[38]

F. Contract Term

Currently, a QF in Oregon is potentially eligible for a 20-year PPA term that begins on the scheduled COD, with a 15-year fixed-price period commencing at scheduled COD and the remaining 5-year term at a market-based rate. Staff proposes that when the scheduled COD is more than three years beyond the date of PPA execution, the fixed price term should be shortened

[37] PacifiCorp notes that the burden of stale QF prices will now be borne 100 percent by Oregon customers under the new 2020 Protocol for situs expenditures. *See In the Matter of PacifiCorp, dba Pacific Power, Request to Initiate an Investigation of Multi-Jurisdictional Issues and Approve an Inter-Jurisdictional Cost Allocation Protocol,* Docket UM 1050, Order No. 20-024 (Jan. 23, 2020).

[38] Under OAR 860-029-0120(4)(a) and (b), which codify the Commission's decision in Order No. 15-130, scheduled CODs may occur anytime "within three years from the date of contract execution" but may occur "later than three years after the date of contract execution if the [QF] establishes to the utility that a later scheduled on-line date is reasonable and necessary and the utility agrees."

by a length equivalent to that extended period.[39] Staff provided the following example in its proposal:

> Scheduled COD is four years after contract execution. In this case, the QF will have a PPA with fixed price term of 14 years (15-1) and fixed price term will be shortened at the end during deficiency period not at the beginning during sufficiency period.[40]

Staff notes that allowing QFs an additional year to come online will reduce utilities' opportunity to "game" the interconnection study process and that decreasing the contract term is responsive to the Commission's concern about stale prices.[41]

The Joint Utilities disagree with Staff's reasoning, as explained above in Section D, Time to Construct Facility. The Joint Utilities also strongly disagree with Staff's suggestion that utilities may "game" the interconnection process to disadvantage QFs. The interconnection study process and timing are subject to FERC- and state-jurisdictional tariffs and rules. To the extent Staff's proposals are aimed at ensuring that the utilities conduct their interconnection studies in a fair and non-discriminatory fashion, there are already systems in place to ensure this result.

G. Default for Failure to Meet Scheduled COD/Damages/Termination

Staff proposes multiple provisions relating to a QF's failure to meet scheduled COD. First, Staff proposes that a utility may issue Notice of Default when a QF fails to meet scheduled COD.[42] The Joint Utilities support Staff's proposal.

Second, Staff proposes that a QF have a one-year period to cure after Notice of Default

[39] As explained in Section D above, the Joint Utilities assume that Staff's proposal also includes shortening the PPA term by a corresponding period of time if the scheduled COD is extended beyond three years.
[40] Staff Letter to Participants at 5-6 (emphasis omitted).
[41] Staff Letter to Participants at 6.
[42] *Id.*

when scheduled COD is three years or less after PPA execution.[43] When the scheduled COD is more than three years after PPA execution, Staff proposes a six-month cure period.[44] However, the Joint Utilities' position is that QFs should not have a unilateral right to schedule a COD more than three years after PPA execution. As noted above, the Joint Utilities believe it is appropriate to maintain the existing three-year limit for scheduled COD and to reduce the one-year cure period to three months to bring the standard PPA more in line with market-based terms. Even with Staff's proposed six-month cure period, the Joint Utilities remain concerned that allowing a scheduled COD more than three years after PPA execution will result in stale pricing and unreasonable costs that must be borne by customers. However, if Staff adheres to its proposal to allow scheduled COD more than three years after PPA execution in some circumstances, the Joint Utilities support shortening the cure period, preferably to three months.

Third, recognizing a utility's need to plan for capacity shortfalls and acquisition of replacement power, Staff proposes that a QF must provide written notice to a utility 90 days in advance if the facility is not coming online by the scheduled COD.[45] Later notice is acceptable only if the QF had no way of knowing 90 days in advance that the facility would not be coming online on the scheduled COD.[46] With one modification, the Joint Utilities support Staff's proposal that a QF must provide the utility written notice 90 days in advance if it is aware of issues that will prevent the facility from coming online by the scheduled COD. Specifically, QFs should be required to provide utilities with regular status updates on project development and construction status throughout the pre-COD period to enable the utility to monitor whether the QF is

[43] *Id.*
[44] *Id.*
[45] Staff Letter to Participants at 6.
[46] *Id.*

meeting critical development and construction milestones.

Fourth and relatedly, Staff proposes that if a QF properly provides written notice that the facility will not be coming online by the scheduled COD, the QF will owe no damages to the utility for replacement power costs during the cure period.[47] The Joint Utilities strongly oppose this proposal. If a QF fails to achieve commercial operations by the scheduled COD, the QF has defaulted under the terms of the PPA and should be liable for *any* damages attributable to its breach. This is the structure for default and damages in any commercial agreement, including the utilities' market-based PPAs, and is the current structure in Oregon standard QF PPAs.[48] Changing this framework would shift the risk of financial harm from the developer to utility customers when such financial harm is caused by the developer's unexcused default—its failure to achieve commercial operation by the scheduled COD. Failing to make the QF responsible for damages under these circumstances would not only create a perverse incentive for a QF to delay commercial operation if it had an economic reason to do so (*e.g.*, to minimize construction costs, seek more advantageous financing, etc.), but would also violate PURPA's customer-indifference standard by forcing utility retail customers to absorb any financial harm if replacement power purchases are more expensive than the contract price under the PPA. The Joint Utilities are unaware of any federal or state directive interpreting PURPA in a manner that would require a utility's retail customers to assume the harm attributable to a QF's default.

The Joint Utilities respectfully disagree with Staff's contention that the utility will suffer no damages for replacement power during the cure period if notice is provided because the utility has sufficient time to devise a plan to replace energy in an economic manner and the QF is already

[47] *Id.*
[48] Docket UM 1610, Order No. 15-130, App. A at 2-3.

being "penalized" with a shortened fixed-price term.[49] It is not always true that the utility can cost-effectively acquire replacement energy and arrange for and procure any transmission service necessary for the replacement energy. There certainly is no guarantee that the cost of replacement energy will not exceed the cost of such energy under the PPA. If the cost of delivered replacement power exceeds the cost under the PPA, there is no legal or policy basis for the QF to not be liable for any excess replacement power cost.

The same logic applies to Staff's assumption that the "QF is already penalized with the shortened fixed price period."[50] To be sure, the QF's default for failure to achieve COD necessarily results in a failure by the QF to sell energy to the utility. However, this does not mean that utility customers should be required to absorb replacement power costs that are caused by the QF's default. Accordingly, the Joint Utilities object to this proposal to shift economic risks to utility customers and recommend that the QF remain responsible for all damages related to its breach of the PPA, regardless of notice. Delay damages are reasonable and necessary to ensure customers are made whole. They do not result in a windfall to utility customers at the QF's expense.

Fifth, Staff proposes that a QF that fails to meet scheduled COD but comes online during the cure period (or after the cure period with agreement from the utility), will have a shortened fixed-price term in the PPA. Specifically, Staff recommends subtracting the number of months during the cure period it took for the QF to come online from the end of the fixed-price term.[51] Again, Staff's rationale for this proposal is that shortening the fixed-price term in the PPA will address concerns regarding stale prices. As discussed above, the Joint Utilities disagree that

[49] Staff Letter to Participants at 6.
[50] Staff Letter to Participants at 6.
[51] *Id.*

shortening the fixed-price term in the PPA will necessarily make customers whole. Please see the Joint Utilities' comments above in Section D, Time to Construct Facility and Section F, Contract Term.

Sixth, Staff proposes that a utility may terminate a PPA after the expiration of the cure period if the QF does not come online, but that the utility must provide written notice of its intent to terminate the contract one month prior to termination.[52] The notice period for termination and the cure period may overlap.[53] The Joint Utilities support this proposal.

Seventh, Staff proposes that a utility may impose liquidated damages when the PPA is terminated because the QF is not coming online at all (*i.e.*, the QF has breached its commitment to sell energy and capacity).[54] The Joint Utilities support Staff's proposal.

Finally, Staff proposes that the QF has no unilateral ability to terminate the PPA.[55] The Joint Utilities support this proposal.

H. Ability to Come Online Prior to Scheduled COD

Staff acknowledges the utilities' need to be able to plan for new resources and make necessary transmission service arrangements,[56] and Staff proposes that a QF cannot come online sooner than 90 days before its scheduled COD without consent from the utility.[57] Staff further suggests that the utility compensate a QF for any deliveries during the 90-day window prior to the scheduled COD at an as-available rate with the fixed-price period and rates beginning upon

[52] Staff Letter to Participants at 6. Although the Staff Letter states that the "utility must provide written notice of intent to terminate one month prior to *notice of termination*," (emphasis added) the Joint Utilities assume Staff intends that written notice of intent to terminate must be provided 30 days or more prior to *termination*.
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.* at 6-7.
[57] *Id.* at 6.

scheduled COD.[58]

The Joint Utilities support Staff's proposal requiring a QF to obtain utility consent to declare COD more than 90 days prior to the scheduled COD because a utility typically needs at least 90 days advance written notice to arrange for transmission services. The Joint Utilities agree with Staff that any deliveries prior to the scheduled COD should be compensated at the as-available rate defined in the PPA or applicable QF schedule.

I. Eligibility for Standard PPA – Nameplate Capacity Rating

Staff proposes that the definition of nameplate capacity should be based on the power production capacity of the facility as a whole, rather than just a component.[59] The Joint Utilities agree with Staff's proposal in concept and also do not propose to change Oregon's current eligibility thresholds for standard contracts or standard prices.

The Joint Utilities do believe, however, that the Commission's current definition of nameplate capacity would benefit from clarification to reduce the chance of future disagreements and disputes.[60] The Joint Utilities recommend that "nameplate capacity" be defined based on the interconnection rating, as follows:

> "Nameplate Capacity Rating" means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW (AC), when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the generator.

This definition is consistent with the definition included in the standard contracts recently

[58] *Id.* at 7.
[59] Staff Letter to Participants at 7.
[60] Docket UM 1129, Order No. 07-360 at 2, 38 (Aug. 20, 2007) (adopting definition of nameplate capacity as "[t]he full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device").

approved and published by the Washington Utilities and Transportation Commission (WUTC) following a process where PacifiCorp and interested parties independently negotiated and were able to agree upon mutually acceptable terms.[61]

J. Eligibility for Standard PPA – Same Site Rule

Staff proposes a review of the requirements related to the same-site evaluation used to determine whether multiple facilities are considered a single QF for purposes of determining eligibility for a standard PPA and rates.[62] Staff proposes that the FERC Order 872 rule defining a single QF for the purposes of eligibility for a PURPA PPA be adopted for determining whether a QF is a single QF eligible for standard QF status under the Oregon rules.[63] Staff also recommends eliminating the community-based/family-owned exemption for "affiliation."[64]

The Joint Utilities oppose Staff's proposal to adopt the FERC Order 872 approach to determining standard PPA and price eligibility and recommend that Oregon's current five-mile rule be preserved. Adoption of Staff's proposal would result in a significant expansion of eligibility for standard QF rates. For example, using the FERC Order 872 rules, two 3-MW solar sites under common ownership within two miles of each other would potentially be deemed separate sites qualifying for standard QF pricing, subject to challenge by the utility. Under Oregon's existing five-mile rule, the two sites would be aggregated and would not be eligible for standard QF pricing. Absent compelling evidence that the current five-mile rule is unworkable or leading to unreasonable results, there is no reason to revisit the balance struck by the Commission and parties

[61] WUTC, Docket UE 190666, Standard Power Purchase Agreement, on behalf of Pacific Power & Light Company (Mar. 1, 2021).
[62] Staff Letter to Participants at 7-9.
[63] *Id*. at 7-8.
[64] *Id.* at 7.

when this rule was originally adopted.[65] The Joint Utilities are unaware of any such evidence.

K. Modifications to QF Facility prior to COD and after COD

Staff conveys its intent to explore with parties whether QFs have sufficient flexibility to incorporate technological advancements in facility design after execution of a standard PPA and before scheduled COD, and also after scheduled COD, and to otherwise make upgrades to the facility to maximize output and efficiency.[66] The Joint Utilities urge Staff to ensure that any material increase to a project's expected generation is priced at the avoided cost prices in effect at the time the increase in generation is achieved.

The Commission's current policy allows operational QFs to implement upgrades to increase efficiency, but provides that to the extent that an upgrade increases nameplate capacity above the eligibility threshold for standard prices, such increased output will be compensated at negotiated prices.[67] This policy seeks to balance the QF's desire to maintain and upgrade facilities over time to optimize efficiency, while at the same time protecting utility customers from being required to pay for increased generation at prices locked in many years in the past.

For some types of facilities, however, it is possible to substantially increase expected generation without changing the nameplate capacity if the definition of nameplate capacity is AC-based. A solar facility's AC-based rating can differ from its DC-based rating if a project is designed to include more DC capacity than can be transformed into AC power at the inverter. A facility's AC-based rating may also differ from its DC-based rating if the project includes DC-

[65] Docket UM 1129, Order No. 06-538 at 10-11 (Sept. 20, 2006) (adopting Partial Stipulation); Docket UM 1129, Order No. 06-586, App. B (Oct. 19, 2006) (attaching Partial Stipulation).
[66] Staff Letter to Participants at 9.
[67] Docket UM 1129, Order No. 06-538 at 4 ("We direct each utility to revise its filed standard contract to provide that if a QF increases the nameplate capacity of its facility by a certain percentage above 10 MW, such as ten percent, then on a going-forward basis, that percentage of power delivered will receive new, negotiated pricing, while the remaining percentage of output will receive pricing under the pre-existing standard contract.").

based storage resources. Thus, a facility's total output could be substantially increased by adding generating or storage capability without altering the AC-based nameplate capacity.

To ensure that substantial increases in output receive the most current avoided cost prices, the Joint Utilities recommend including a limitation on increases to annual net output in the standard PPA. Specifically, a QF project would identify its expected net output, and any modification to the project that would cause the expected net output to increase by more than ten percent would not be permitted under the standard contract without prior written approval by the utility and adjustment of the applicable avoided cost price for the increase. Such a contract provision would protect customers from paying stale avoided cost prices for significant new generation while providing QFs the flexibility to operate and modernize their facilities.

The recommendations set forth above are consistent with the as-built supplement provision included in the standard contracts recently approved and published by the WUTC following a process where PacifiCorp and interested parties independently negotiated terms and were able to agree on mutually acceptable operation and control terms.

L. Requirement for Minimum Availability Guarantee (MAG) for Intermittent Resources

Staff recommends no changes to the existing PPA provisions implementing a minimum availability guarantee for intermittent resources.[68] The Joint Utilities recommend that these provisions be revisited and that a minimum availability guarantee be retained only for wind QFs,

[68] Staff Letter to Participants at 9.

as discussed in detail in Section O below.

M. Penalties for Failure to Meet MAG

Staff recommends no changes to the existing PPA provisions pertaining to penalties for failure to meet a stipulated Minimum Availability Guarantee (MAG).[69] The Joint Utilities disagree and instead recommend that the standard QF PPA provisions should be revised to more accurately reflect the relative damages of failing to meet minimum guarantees in certain peak versus non-peak months and hours. The current PPA provisions calculate a single damage payment for an entire year period. This method does not recognize the replacement market prices coinciding with the period(s) during which the QF experienced a performance shortfall. To be more accurate, damage calculations should more closely reflect the actual or estimated costs incurred by the utility as result of a minimum availability guarantee not being met on a month-by-month basis. The Joint Utilities propose that any payments due for failure to meet a MAG should be determined, invoiced, and due for the applicable performance period, but that the calculation should be a product of each monthly shortfall and the respective time-weighted monthly market price that is deemed to be the cost incurred to replace such shortfall not delivered.

N. Scheduled Outages

The scheduled outage provisions in a typical PPA describe the general categories of generation facility outages and specify when and how a QF is required to inform the utility of such outages. Staff recommends no changes to the current scheduled outage provisions.[70]

The Joint Utilities propose updating the scheduled outage provisions to reflect market-based PPA terms, including those provided in QF PPAs from other states such as PacifiCorp's

[69] *Id.* at 9-10.
[70] *Id.* at 10.

standard PPA recently approved in Washington.[71] Outage provisions should: (a) provide additional details pertaining to outages (for example, scheduled maintenance and forced outages tied to industry-established North American Electric Reliability Corporation (NERC) Event Types); (b) clarify QF responsibilities in each of these different event types; (c) require the QF to provide a forecast of planned and maintenance outages with sufficient notice for the utility to secure any necessary replacement generation; (d) apply reasonable limitations on planned and maintenance outage schedules; and (e) require ongoing updates regarding planned and maintenance outages and its impact on the QF's expected energy deliveries.

Specifically, the Joint Utilities propose that the scheduled outage provisions address notice instructions and intervals for planned outages, maintenance outages, and unplanned (forced) outages, as those terms are defined by NERC.[72] For planned outages, the QF should provide the utility with an annual forecast of planned outages for each contract year at least one month, but no more than three months, before the first day of that contract year, and may update such planned outage schedule as necessary to comply with prudent electrical practices.

For maintenance outages, the QF should notify the utility of a proposed maintenance outage as soon as practicable, but at least five days before the outage begins. Any notice of a proposed maintenance outage by the QF should include the expected start date and time of the outage, the amount of generation capacity of the facility that will not be available, and the expected completion date and time of the outage. The QF should also be required to keep the utility apprised of any changes in the generation capacity available from the facility during the maintenance outage

[71] WUTC, Docket UE 190666, Standard Power Purchase Agreement, on behalf of Pacific Power & Light Company (Mar. 1, 2021).
[72] NERC, *Generating Availability Data System: Data Reporting Instruction*, at III-1 to III-28 (effective Jan. 1, 2021), https://www nerc.com/pa/RAPA/gads/DataReportingInstructions/GADS_DRI_2021.pdf.

and any changes in the expected maintenance outage completion date and time.

For forced outages, the QF should provide prompt oral notice of any forced outage resulting in more than ten percent of the nameplate capacity rating of the facility being unavailable, along with detail regarding the amount of generation capacity that will not be available and the expected return date of such generation capacity. As soon as practicable, the oral report should be confirmed in writing to the utility.

Additionally, for planned and maintenance outages, the Joint Utilities propose prohibiting the QF from scheduling such outages during the months of July and December when load is anticipated to be high, except to the extent that such outages are reasonably required to satisfy a guarantee requirement or must be scheduled during this time consistent with prudent electrical practices.

Aside from these three NERC outage types, the QF should also inform the utility of any limitations, restrictions, deratings, or outages reasonably predicted by the QF to affect more than five percent of the nameplate capacity rating of the facility for the following day.

O. Requirements for Minimum Delivery for Intermittent Resources (with no battery)

Staff proposes that a utility may not impose minimum delivery requirements for an intermittent resource that has no associated battery as Staff is unaware of any circumstances in which minimum delivery requirements for intermittent resources, without associated storage, are appropriate.[73] While Staff acknowledges that its consultant in docket UM 2011 identified circumstance in which minimum delivery requirement would be appropriate for intermittent resources with storage, Staff asserts that this issue is appropriately addressed in the investigation

[73] Staff Letter to Participants at 10.

into the avoided cost price methodology that will be conducted in docket UM 2000.[74]

The Joint Utilities respectfully request that Staff reconsider its position and recommend that availability and performance guarantees for each technology except storage be comprehensively considered as part of this docket. The Joint Utilities agree with Staff's position that minimum delivery requirements should be required for intermittent resources associated with battery storage and that issues surrounding storage are appropriately addressed in docket UM 2000, but the Joint Utilities also maintain that technology-specific performance guarantees should be required by resource type, as follows:

- Solar-only resources should have a minimum output guarantee;
- Wind resources should have a minimum availability guarantee; and
- Baseload hydropower should have a minimum output guarantee.[75]

The existing MAG provisions for intermittent resources seem to have been developed contemplating wind resources, which are less predictable than solar resources. With the increased prevalence of solar QFs, and the expected advent of battery-storage-coupled projects, it is appropriate to reconsider the type of performance criteria that is reasonable to apply to each technology type and best protects customers. The recommendations set forth above are consistent with the guarantees included in the standard contracts recently approved and published by the WUTC following a process where PacifiCorp and interested parties independently negotiated terms and were able to agree on mutually acceptable performance terms.

With respect to damages for failure to meet any minimum output guarantee, the Joint

[74] *Id.*

[75] Subject to resolution of storage-related pricing and dispatch issues in docket UM 2000, resources with batteries will require additional considerations with respect to the applicability of a minimum output guarantee, guaranteed storage availability, and guaranteed storage capacity rating with an annual storage capacity test.

Utilities recommend that, in the event energy deliveries during a specified period are below 90 percent of the expected energy for that period, the QF will owe damages for such deficiency equal to:

a. the product of (i) the deficiency for such period and (ii) the utility's cost to cover; plus

b. the cost of any replacement energy procured by the utility as a result of the QF's failure to meet the minimum output guarantee and any resulting incremental ancillary services and transmission costs; plus

c. the cost of replacement Renewable Energy Credits.

Avoided cost pricing includes a capacity payment, which means that utilities are compensating QFs to be reliably available and producing as expected. Provisions should be included in standard PPAs to ensure that QFs fulfill these obligations for the protection of customers. The Joint Utilities' proposed performance guarantees are commercially standard, fair, and reasonable, and the Joint Utilities request that Staff consider these performance guarantees and related damage provisions in this docket.

P. Default Security

In its proposal, Staff recommends no changes to the current options for default security,[76] which are: (1) cash escrow security; (2) letter of credit security; (3) step-in rights; and (4) senior lien.[77] The Joint Utilities propose that the current options for default security be revised and that both pre- and post-COD performance assurances be incorporated into the standard contract in order to protect customers from costs as a result of default.

[76] Staff Letter to Participants at 10-11.
[77] Docket UM 1129, Order No. 06-538 at 2, 16-18 (allowing utility definitions of Default Security Options and Default Security).

Meaningful security is necessary to protect utility customers in the event of a QF default because developers typically use single-purpose LLCs as the party to standard PPAs. These single-purpose limited liability companies lack a substantial balance sheet and often are not creditworthy counterparties. Given the long-term nature of the standard PPAs and the commitments the QFs make, a QF's potential liability to the utility can be significant. Security ensures that utility customers are held harmless and protected in the event of a QF default. Without a security requirement, utility customers bear the financial risk if a QF defaults and then is unable to pay for the financial cost to utility customers of such default.

As a general matter, step-in rights do not adequately protect utility customers in the event of default where the default occurs prior to the facility being constructed because exercising such a remedy would involve the utility incurring additional costs and risks to develop, operate, and maintain the project. If the event of default occurs after the facility is constructed, step-in rights can be very costly for a utility to exercise and are often subordinated to lenders' rights. For these reasons, the Joint Utilities recommend eliminating step-in rights as a default security option. Staff asserts that the burden to QFs of eliminating step-in rights outweighs the interest of the utility,[78] but it is not clear on what facts and circumstances Staff based this conclusion. The Joint Utilities recommend that Staff further explore the burden to QFs of eliminating step-in rights and examine whether step-in rights provide a meaningful form of financial assurance to a utility and its retail customers.

If a QF elects to provide a letter of credit, the Joint Utilities recommend that the letter of credit be issued by a Qualifying Institution. The Joint Utilities propose that a Qualifying Institution

[78] Staff Letter to Participants at 11.

be defined as a United States commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof having assets of at least $10,000,000,000 (net of reserves) and a credit rating on its long-term senior unsecured debt of at least 'A' from S&P and 'A2' from Moody's.

Additionally, the Joint Utilities propose that pre- and post-COD performances assurances be implemented. The Joint Utilities propose that QFs be required to provide pre-COD security in an amount equal to:

i. Fifty dollars ($50) per kW of the Nameplate Capacity; plus

ii. Fifty dollars ($50) per kW for any volume of the Net Available Capacity for which Long-Term Firm Transmission has not been acquired [off-system only]; plus

iii. Fifty dollars ($50) per kW of Net Available Capacity until Seller executes a generation Interconnection Agreement and pays any requisite deposits.

If the QF has failed to (a) execute an Interconnection Agreement, or (b) execute a Long-Term Firm Transmission agreement and Ancillary Services agreement [off-system only] by the dates set forth in the agreement, the QF must forfeit the associated pre-COD security to the utility. Any failure by a QF to deliver and maintain the required security should give rise to a default for which the utility can exercise termination rights if such failure is not promptly cured.

The Joint Utilities propose a post-COD performance assurance equal to the greater of the calculated Projected Power Replacement Costs and Projected Contract Costs or $50 per kW of the Net Available Capacity. During the Sufficiency Period, the Joint Utilities propose that the "Projected Power Replacement Costs" equal the net present value of 110 percent of the forward

price curve ICE Mid-C Index futures for both On-Peak hours and Off-Peak hours multiplied by the energy to be delivered during such hours over the next five years. During the Deficiency Period, the Joint Utilities propose that the "Projected Power Replacement Costs" equal the net present value of the sum of:

i. 110 percent of the forward price curve for ICE Mid-C Index futures for both On-Peak hours and Off-Peak hours multiplied by the energy to be delivered during such hours over the next five years;

ii. 110 percent of the projected spot price for Qualifying Replacement Renewable Energy Credits multiplied by the energy to be delivered over the next five years.

The Joint Utilities further propose that the "Projected Contract Costs" equal the net present value of the Fixed Prices for both On-Peak hours and Off-Peak hours multiplied by the energy to be delivered during such hours over the next five years.

Q. Other Breaches of PPA/Default/Termination

Staff proposes that all PPAs should include a requirement for written notice of default and that defaults should include a minimum 30-day cure period before the non-defaulting party may terminate the PPA.[79] The Joint Utilities do not object to either proposal.

Staff also proposes that QFs must have the option to specify that a lender will be entitled to cure default.[80] The Joint Utilities do not object to a provision in the PPA that allows a lender to cure defaults, so long as it is clear that the lender's ability to cure defaults does not extend the time to cure or otherwise amend or modify the default and termination provisions of the PPA.

Finally, Staff proposes that while a utility may terminate a PPA after the cure period, the

[79] Staff Letter to Participants at 11.
[80] *Id.*

utility must provide written notice of its intent to terminate the contract one month prior to such notice of termination.[81] The Joint Utilities do not object to this proposal with two points of clarification: (1) the notice of default may include notice of intent to terminate in which case a separate notice of termination is not required; and (2) the notice of termination must be provided 30 days or more before termination (this clarification is necessary to make this provision consistent with Staff's proposal regarding a 30-day cure period).

R. Insurance

In its proposal, Staff recommends no changes to the current requirement that a QF obtain a liability policy with coverage of $1,000,000 from an insurer with B+ rating.[82] However, the Joint Utilities remain concerned about inadequate insurance coverage and the resulting risk to utility customers given that utility customers will be responsible for any loss that is not covered by a QF's carrier. In order to protect utility customers, the Commission should require QFs to provide insurance on a basis that is comparable to market. For example, PacifiCorp has required at least an "A-" insurance rating in all of its recent PURPA contracts and generally requires QFs to carry at least $1,000,000 in commercial general liability coverage and $5,000,000 in umbrella coverage. PGE's negotiated PURPA PPAs routinely require the QF to carry at least $2 million in commercial general liability coverage from an insurer with a rating of at least "A-". Similarly, all of Idaho Power's PURPA PPAs in Idaho and its PPA for the Oregon Solar Photovoltaic Pilot Program require at least $1 million in commercial general liability coverage from an insurer with a rating

[81] *Id.*
[82] *Id.*

of at least "A-".[83] In the Joint Utilities' experience, both the minimum rating requirement and the minimum insurance limits are consistent with market-based terms and conditions, and the Joint Utilities are unaware of any concerns raised by QF developers that these requirements would be difficult to meet. Finally, the Joint Utilities continue to support moving these and other insurance requirements to an exhibit to the PPA.[84]

S. Notices

Staff suggests that PPA terms stating where notices are directed for both parties should be set forth in an exhibit to the PPA that can be modified without amending the PPA.[85] The Joint Utilities support Staff's proposal for a notice exhibit to the PPA.

Staff also suggests that the QF may designate a lender as person to receive Notice of Default.[86] The Joint Utilities agree that the QF should be permitted to specify the contacts who receive written notices under the PPA and may include a lender as a third-party to be copied on all written notices under the PPA. This accomplishes the goal of providing notice to the lender of any default notices and makes providing notices to lenders less administratively burdensome and complex (*i.e.*, the lender would receive all notices, not just default notices).

T. Additional Key Contract Provisions

As explained in the introduction, the Joint Utilities support broadening the scope of this

[83] Idaho Power Company Advice No. 10-11, Requesting Approval of Tariffs and Applications Necessary to Implement a Volumetric Inventive Rate Pilot Program for Solar Photovoltaic Energy Systems (filed June 22, 2010, effective Jul. 1, 2010).
[84] Other insurance requirements for Staff to consider in this docket include or provide for: (i) coverages for property damage (replacement value "all risk"), automobile liability ($1,000,000), worker's compensation (in compliance with applicable law), employers' liability ($1,000,000); (ii) additional insured, primary coverage, cross liability and waiver of subrogation endorsements; (iii) a five-year tail; (iv) proof of insurance; (v) cancellation notification; and (vi) periodic update to required coverages during term.
[85] Staff Letter to Participants at 11.
[86] *Id.*

docket and considering actual contract language to streamline the compliance filing process and potentially avoid the need for subsequent proceedings to comprehensively update the utilities' standard PPAs. Whether or not this recommendation is adopted, the Joint Utilities propose several additional issues for consideration in this docket, as described below. However, based on their understanding that pricing and other issues related to battery storage will be considered in docket UM 2000, the Joint Utilities are not proposing PPA terms and conditions specific to QFs that include battery storage at this time. The Joint Utilities note that QFs incorporating storage pose several unique issues and challenges that will need to be addressed comprehensively in docket UM 2000.[87]

As discussed above, a number of Staff's proposals would require revisions to the utilities' standard PPAs to address contractual issues that are likely to arise in the event that a QF executes a standard PPA before its interconnection study results are available. If the subsequently issued study results do not support the scheduled COD specified in the PPA or otherwise do not support interconnection within the required timeframe (*i.e.*, the timeframe in which the Commission would deem a QF to be eligible for the standard avoided cost prices included in the PPA), the PPA should provide for termination with damages or, if the parties agree to modify the scheduled COD, updated pricing. Such provisions are critical to ensuring QFs receive only the standard avoided cost pricing for which they are eligible under the Commission's rules implementing PURPA, thereby ensuring the Joint Utilities' retail customers pay no more than what this Commission has determined is "just and reasonable" under PURPA. QF development concerns do not outweigh

[87] For example, new contract provisions will be needed to address dispatch control, automated generator control (AGC) requirements, scheduling, metering, house power, losses, and performance guarantees applicable to battery performance and capacity, among other things.

this Commission's mandates under Section 210(b) of PURPA, particularly when a QF is seeking to "lock in" a standard avoided cost before the viability of the QF's proposed scheduled COD can be reasonably confirmed.

Second, the Joint Utilities propose that the conditional designation of network resource notice provision approved by this Commission for inclusion in the utilities' Community Solar Program PPAs,[88] and also included in the standard PPAs recently approved by the WUTC, be considered in this docket. These provisions protect customers from potentially extremely expensive costs not accounted for in the current avoided cost pricing methodology. Specifically, the notice provision allows for additional negotiations between the QF and the utility followed by a process before the Commission, if needed, in the event the utility's transmission service request for the QF's output, submitted by the utility after the PPA is executed, shows transmission-service-related network upgrades are required.

Third, the contractual language in the liquidated damages and force majeure provisions in the standard PPAs should be clarified and modernized. The language used in the PPA recently agreed upon by PacifiCorp, NIPPC, and REC and approved in Washington provides a useful model for such improvements.

Fourth, the Joint Utilities believe that an existing QF entering a new PPA may warrant a different contracting process, different contract terms and conditions, or a shorter PPA term, and the Joint Utilities suggest that this issue be further explored in this docket.

Lastly, in addition to the key issues described above, Staff should consider all other

[88] *In the Matter of the Public Utility Commission of Oregon, Community Solar Program Implementation*, Docket UM 1930, Order No. 20-122, at 2 (Apr. 9, 2020) ("[w]e approve the Conditional DNR notice provisions [proposed by PGE and PacifiCorp] as a reasonable method for the Commission to continue to achieve transparency and a balance of costs and risks."). Order No. 20-122 also contains the full text of the approved provision in Appendix A.

provisions necessary to update the standard PPAs to include market-based terms and conditions, including provisions to address scheduling for test energy, environmental attributes (including damage provisions that account for the value of environmental attributes in determining cost to cover), payment provisions for off-system QFs, and capacity rights, among others.

U. Conclusion

The Joint Utilities appreciate the opportunity to comment on Staff's thoughtful proposals for updating standard PPA terms and conditions. The Joint Utilities look forward to further discussion of the issues raised in these comments at the upcoming workshop, and to working cooperatively with Staff and QF parties to update and modernize the utilities' standard PURPA PPAs.

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McDOWELL RACKNER GIBSON PC

Lisa Rackner
Adam Lowney
Jordan Schoonover
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
dockets@mrg-law.com

David White
Portland General Electric Company

Carla Scarsella
PacifiCorp, dba Pacific Power

Donovan Walker
Idaho Power Company

Attorneys for Portland General Electric Company, PacifiCorp, dba Pacific Power, and Idaho Power Company

ATTACHMENT A

to

Joint Utilities' Initial Comments

	Tracking Solar Standard Renewable Price		PPA MWh (1MW Tracking Solar)		PPA $, 15 years		PPA $, 14.5 years	
	8/25/2020	8/26/2020	15 year	14.5 year	8/25/2020	8/26/2020	8/25/2020	8/26/2020
2024	$44.78	$23.35	2566	1283	$114,890	$59,906	$57,445	$29,953
2025	$45.85	$23.99	2553	2559	$117,060	$61,243	$117,354	$61,397
2026	$46.99	$24.61	2540	2547	$119,367	$62,514	$119,667	$62,671
2027	$48.14	$25.34	2527	2534	$121,680	$64,044	$121,986	$64,205
2028	$49.09	$25.84	2515	2521	$123,459	$64,988	$123,770	$65,151
2029	$50.20	$26.53	2502	2509	$125,613	$66,384	$125,928	$66,550
2030	$51.34	$27.24	2490	2496	$127,821	$67,812	$128,142	$67,982
2031	$52.46	$27.89	2477	2484	$129,950	$69,095	$130,276	$69,268
2032	$53.36	$28.33	2465	2471	$131,532	$69,821	$131,862	$69,996
2033	$54.33	$28.82	2453	2459	$133,244	$70,693	$133,579	$70,871
2034	$55.34	$29.34	2440	2446	$135,049	$71,609	$135,388	$71,789
2035	$56.37	$29.86	2428	2434	$136,880	$72,510	$137,224	$72,692
2036	$57.52	$30.53	2416	2422	$138,975	$73,759	$139,325	$73,945
2037	$58.63	$31.17	2404	2410	$140,952	$74,938	$141,306	$75,126
2038	$59.77	$31.83	2392	2398	$142,951	$76,139	$143,311	$76,331
NPV at 6.92%			22823	21674	$ $1,161,309	$613,010	$1,110,230	$586,395

NPV % change, ($) 14.5 years @ old pricing vs 15 years @ updated pricing NPV **-44.8%**

Levelized Price				$/MWh	$50.88	$26.86	$51.22	$27.06