BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2000

Phase 0

In the Matter of Public Utility Commission of Oregon, Investigation into PURPA Implementation	COMMUNITY RENEWABLE ENERGY ASSOCIATION, NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION, AND THE RENEWABLE ENERGY COALITION'S COMMENTS ON STAFF'S REPORT

I. INTRODUCTION AND SUMMARY

The Community Renewable Energy Association, the Northwest & Intermountain Power Producers Coalition, and the Renewable Energy Coalition's (collectively the "QF Trade Associations") hereby respectfully submit these comments on the Oregon Public Utility Commission ("OPUC" or the "Commission") Staff's Report and Proposal for an Interim Solar-plus-Storage Standard Avoided Cost Rate ("Staff's Proposal") emailed to stakeholders on May 9, 2023. The QF Trade Associations appreciate the efforts of Staff and other stakeholders in expeditiously and collaboratively developing an interim solar-plus-storage standard rate for small qualifying facilities ("QFs") under the Public Utility Policies Act of 1978 ("PURPA"). Although there was opposition to development of a standard solar-plus-storage rate at the outset, the structure of Staff's Proposal—in particular its reliance on an enhanced volumetric capacity rate paid during premium peak hours—ultimately reflects the consensus of the QF parties and the utilities.

As explained below, the QF Trade Associations largely support Staff's Proposal, but provide a clarification of their position with respect to the proposed 50-megawatt ("MW") cap and an alternative proposal with respect to whether the four daily premium peak hours may be changed during the term of a power purchase agreement ("PPA") as follows:

- 50-MW Cap: In addition to the conditions on the cap discussed in Staff's Proposal, the Commission should take steps to ensure that if the cap is reached, there is no protracted period without a standard solar-plus-storage rate for QFs otherwise eligible for standard solar rates.
- Fixed Versus Variable Premium Peak Hours: As an alternative to Staff's Proposal, the Commission should require the utilities to offer two rate options: (i) first, a standard rate under with the four premium peak hours remain fixed for the contract term, and (ii) second, a standard rate that reflects the increased value to the utility of the ability to update four premium peak hours during the contract term.

II. COMMENTS

A. The QF Trade Associations Largely Support Staff's Straw Proposal as a Reasonable Interim Rate.

Staff's Proposal includes the common elements for a solar-plus-storage rate proposed by QF Trade Associations and the utilities. Specifically, Staff's Straw Proposal for an interim solar-plus-storage standard rate utilizes a volumetric rate that allocates capacity payments to the "premium peak" hours of greatest capacity need to incent charging and discharging of the battery

energy storage system consistent with the purchasing utility's peak capacity needs.[1] Staff's Proposal allows each utility to propose its own unique premium peak hours and capacity contribution value for the solar-plus-storage QFs.[2] The standard rate would be available to AC-connected or DC-connected solar-plus-storage QFs with power production capacity (as measured at the point of interconnection) of 3 MW or less, and which utilize two-hour to four-hour battery system and 1:4 through 1:1 storage-to-solar ratio.[3]

The QF Trade Associations agree with Staff's general framework and eligibility for the standard rate. Payment for the capacity value as a volumetric rate reasonably ensures that the QF is only paid for discharging the battery and delivering capacity consistent with the rate design, while also avoiding the additional complexity of developing contract provisions enabling a fixed, dollar-per-kW-month capacity payment for the interim rate.[4] The QF Trade Associations also agree with Staff that the volumetric payment mechanism justifies using the four-hour, 1:1 solar-plus-storage facility as the proxy used for development of the capacity contribution value and potential capacity dollars to be spread over the four, daily premium peak hours. A QF with an undersized system relative to the proxy (e.g., a QF with a two-hour battery and a 1:4 design)

---

1 Staff's Proposal, pp. 9-10.
2 Staff's Proposal, pp. 8-9.
3 Staff's Proposal, p. 8.
4 *See, e.g., See In re Idaho Power's Petition to Determine the Project Eligibility Cap for Published Avoided Cost Rates and the Appropriate Contract Length for Energy Storage Qualifying Facilities*, IPUC Case No. IPC-E-20-02, Order No. 34913 at 6 (Feb. 5, 2021) (explaining: "By identifying its Peak Hours and Premium Peak Hours, the utility sends a price signal to energy storage QFs to dispatch energy at the times the utility most needs the energy. Because energy storage QFs can alter their output to respond to price signals, identifying and pricing high-value hours accordingly can encourage QF development and help the utility avoid higher-cost resources, benefiting ratepayers.")

would be paid proportionally lower rates by virtue of the fact that it cannot deliver as much energy during the premium peak hours and would thus be paid less of the overall capacity dollars available to a QF designed with the same exact configuration as the proxy. The utilities have expressed concern with expanding the eligibility to any solar-plus-storage system that does not match the proxy's configuration, but the perceived imprecision is no different than any other category of standard rates. At the end of the day, the volumetric rate design ensures that any QF unable to deliver energy during all of the targeted premium peak hours will not be paid the full capacity value attributed to the solar-plus-storage proxy.

Staff explains that solar-plus-storage QFs with capacity in excess of 3 MW, or different configurations than authorized for the standard rate, can still negotiate a non-standard rate.[5] The QF Trade Associations appreciate this clarification and support its inclusion in the Commission's order. Such clarification is necessary to ensure that creation of this standard rate for certain small QFs meeting specific criteria is not misinterpreted to prevent use of non-standard rates by storage QFs that are ineligible for the standard rate due to nameplate capacity, the storage configuration and technology used, or a circumstance where the 50-MW cap is reached. The non-standard rate option would also allow larger QFs to negotiate a different compensation structure and any necessary contract provisions, such as a payment for capacity through a dollar per kilowatt-month price rather than a dollar per kilowatt-hour price used in the interim standard rate option.

---

5 Staff's Proposal, pp. 10-11.

B. The QF Trade Associations Recommend an Additional Condition on Staff's Proposed 50-MW Cap.

In an effort to address concerns raised by the utilities, Staff's Proposal includes a 50-MW cap.[6] This proposal was made in response to the utilities' concern with a "land rush" of small QFs locking in the interim rate, and the possibility of unanticipated effects, before a potentially more complex rate mechanism can be developed through lengthy adjudication in later phases of this docket. Staff proposes that, if reached, such cap could be lifted or otherwise become inapplicable after a review has been completed by the OPUC.[7]

While the QF Trade Associations do not generally support the use of caps, they do not oppose Staff's proposed cap under the unique circumstances here to facilitate near-term implementation of the interim standard rate provided that certain additional clarifications are provided. First, as Staff's Proposal clarifies, the 50-MW cap per utility applies only to the interim *standard* rate, and any solar-plus-storage QF that would have been eligible for the standard rate will remain eligible to negotiate a non-standard rate if the cap is reached.[8] Second, Staff's Proposal clarifies that QFs with power production capacity of 100 kilowatts ("kW") or less should continue to be eligible for the standard solar-plus-storage rate even if the 50-MW cap is reached for any utility.[9] The QF Trade Association agree those are two necessary conditions on any cap under applicable law.[10]

---

6 Staff's Proposal, pp. 6, 10-11.
7 Staff's Proposal, p. 6.
8 Staff's Proposal, p. 11.
9 Staff's Proposal, p. 11.
10 *See Hydrodynamics Inc.*, 146 FERC ¶ 61,193, P 34 (Mar. 20, 2014) (holding 50-MW cap on wind QFs with capacity in excess of 100 kW violated PURPA because no PURPA-compliant fixed-rate option was offered to such wind QFs after cap was reached); 18 CFR § 292.304(c)

However, Staff's Proposal omits a critical third condition recommended by the QF Trade Associations. Specifically, the QF Trade Associations' non-opposition to the cap is conditioned on the Commission clarifying that it will not allow the affected utility to delay in proposing revisions, if any, to address any concerns it has with the interim standard rate, and the Commission will take actions to prevent protracted periods with no standard rate option for solar-plus-storage QFs up to 3 MW in capacity (or the otherwise established eligibility cap for standard solar rates). This condition is important because experience suggests it could be years before the larger UM 2000 case is completed with final rates implementing a non-interim standard rate for solar-plus-storage QFs. Allowing the standard solar-plus-storage rates to become unavailable, potentially for many months or even years, for otherwise eligible QFs just because 50 MW of capacity is contracted would not be in keeping with Oregon's clean energy goals. Thus, action should be taken to ensure that if the cap is reached, it will be promptly lifted unless some concrete problem with the interim rate is identified and cannot be promptly resolved.

C. The QF Trade Associations Recommend that Eligible QFs Should Be Allowed to Elect Fixed or Variable Premium Peak Hours in a PPA.

The Commission should provide additional flexibility with respect to the question of whether the purchasing utility may update the premium peak hours applicable to QF's executed PPA. Specifically, as an alternative to Staff's Proposal, the Commission should require the

---

(standard rates required for QFs with capacity of 100 kW or less); *Franklin Energy Storage One, LLC v. Kjellander*, Case No.: 1:18-cv-00236-REB, 2020 U.S. Dist. LEXIS 8892 at **43-47 (D. Id., Jan. 17, 2020) (holding Idaho PUC violated PURPA by categorizing solar-plus-storage QFs as solar QFs and limiting them to standard rate options for solar QFs).

utilities to offer two rate options: (i) first, a standard rate under which the four premium peak hours remain fixed for the contract term, and (ii) second, a standard rate that reflects the increased value to the utility of the ability to update the four premium peak hours during the contract term.

Staff's initial straw proposal included a provision that the four premium peak hours would remain fixed during the term of the PPA.[11] Additionally, this was one of the disputed issues with respect to the standard solar-plus-storage rate adopted by the Idaho Public Utilities Commission ("IPUC"), and the IPUC ultimately required that Idaho Power's premium peak hours remain fixed for the term of the QF's PPA.[12] Staff's Proposal here, however, adopts the utilities' recommendation that the four premium peak hours be allowed to be updated during the term of the PPA.[13] Unlike the utilities, who would like to update the premium peak hours every year, Staff would only allow the update to occur after an acknowledged Integrated Resource Plan ("IRP") or IRP Update.[14]

---

11 Staff's Phase 0 Process Update and Straw Proposal, Docket No. UM 2000, p. 4 (April 6, 2023) ("Premium peak hours will not vary over the course of the contract.")

12 *See* IPUC Case No. IPC-E-20-02, Order No. 34913, p. 7 ("We find it fair and just that updates to the Peak Hours and Premium Peak Hours only apply to new and renewal contracts. When a QF enters a contract, its Peak Hours and Premium Peak Hours will be known for the duration of the contract. While locking-in the Peak Hours and Premium Peak Hours for the term of the contract may impact the ability to discretely target specific hours for energy storage QF capacity contribution, it does provide QFs certainty regarding their commitments during the term of the contract.").

13 Staff's Proposal, pp. 5-6.

14 *Id.*

As Staff notes, there are concerns that allowing the premium peak period to be updated during the contract term may mean the rate is not a fixed rate under PURPA. That was also a consideration in the IPUC order.[15]

However, in addition to that legal concern, there are additional practical uncertainties that would have to be considered and that could frustrate financing of the facility. Changes to the premium peak hours could impact the overall revenue paid to the facility. Depending on the spread between the energy-plus-capacity prices available during the four premium peak hours and the energy-only price available during all other hours, the impact on the revenue to facility might be material. If the utility has the right to shift the premium peak hours in a manner that increases the number of daylight, solar-producing hours that are premium peak hours, it could undermine the purpose of the battery in the first place and result in the QF installing an unnecessarily oversized battery system. At this time, it is not possible to adequately analyze the issue because no rates have been proposed by the utilities and the policy is being addressed in the abstract. However, these complicated possibilities will need to be carefully analyzed in financing any QF that has a contract allowing the utility to update the premium peak hours.

Given the uncertainties at this stage of the proceedings, the QF Trade Associations recommend the Commission should require the utilities to offer two rate options: (i) first, a standard rate under which the four premium peak hours remain fixed for the contract term, and (ii) second, a standard rate that reflects the increased value to the utility of the ability to update

---

[15] *See* IPUC Case No. IPC-E-20-02, Order No. 34913, p. 4 (explaining that IPUC Staff stated "that the Company's proposal to update Peak Hours and Premium Peak Hours during a contract may run afoul of 18 C.F.R. § 292.304(d)(2), because it might not allow a QF to establish the rates it will receive at the time the contract is signed").

the four premium peak hours during the contract term. The utilities should be required to do so at least in their compliance filings to provide parties and the Commission with a better understanding of the value that exists with the ability to update the four premium peak hours. If the value is substantial, individual QFs could elect to enter into a contract giving the utility the ability to update the premium peak hours, but if the value is insubstantial, it may make more sense for a QF to proceed with the certainty of the fixed premium peak hours from the outset.

Relatedly, the QF Trade Associations agree with the aspect of Staff's Proposal that would allow for up to two premium peak periods per day. This would allow the utility to split the four premium peak hours into a morning peak and evening peak in certain months, such as the winter months (e.g., two morning hours and two evening hours of premium peak). This added flexibility should provide substantial value to the utility over a requirement for four consecutive premium peak hours every day. The QF Trade Associations understood that the only utility to comment on the issue at the last workshop agreed that this limitation to two periods per day would be reasonable. However, allowing more than two premium peak periods within the day could impose significant costs on the facility and would not be appropriate within the standard rate framework.

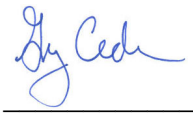
III. CONCLUSION

The QF Trade Associations recommend approval of Staff's Proposal for the Interim Standard Solar-plus-Storage Rate subject to the clarifications in these comments.

Dated this 12th day of May 2023.

Respectfully submitted,

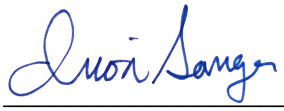
Richardson Adams, PLLC



Gregory M. Adams
515 N. 27th Street
Boise, ID 83702
Telephone: (208) 938-2236
Fax: (208) 938-7904
greg@richardsonadams.com

Of Attorneys for the Community Renewable Energy Association

Sanger Law, PC



Irion Sanger
Ellie Hardwick
Sanger Law, PC
4031 SE Hawthorne Blvd.
Portland, Oregon 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Northwest & Intermountain Power Producers Coalition and the Renewable Energy Coalition