



Oregon Public Utility Commission  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

June 9, 2021

Dear Staff and Stakeholders,

Oregon Solar+Storage Industries Association (OSSIA) submits these comments regarding the updated Staff proposal (Staff Proposal) filed in this docket on April 29, 2021.

At the highest level, OSSIA would like to highlight these primary core principles and concerns:

- **Create an investable framework.** Policy decisions made in this docket, and generally on PURPA, should lead to a more stable, clear, understandable, and investable environment. Uncertainty, utility discretion, punitiveness, lack of accommodation for real world issues, and lack of holding the utilities accountable should be reduced.
- **Provide appropriate accommodation for COD and real-world schedule & development timelines and issues:** Many factors are outside the Qualifying Facility's (QF) control, especially interconnection timing, with one or more utility holding a QF's fate in their hands. Any advanced project, especially one that has started construction, closed construction financing, or made major financial commitments, should be ensured accommodations to reach COD successfully, and should not live in fear of provisions that might discourage construction financing from closing due to default fears.
- **Ensure functionality and effectiveness of QF contracting process.** Policy adopted in this docket should avoid obstruction, dispute prone, or delay-causing provisions, avoid creating new utility discretion which can cause delay and impede contracting.
- **Inform issues against the backdrop of the utilities mandatory purchase obligation.** Where utilities do not have discretion to reject a purchase or decide aspects of a QF or a QF's business process or decisions, do not create new utility authority to do so. Utilities' conflicting incentives are substantial.
- **Avoid creating indirect incentives for utility negligence.** There can be fatal consequences around uncontrollable interconnection and study timelines, for example, which can result in utility delays and disputes. QFs engaging in good faith should neither be subject to a utility's failure to perform, lack of consequences, lack of competence, negligence, conflicting priorities,

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changes in tariffs, changes in scheduling, lack of staffing, neglect or delay in duly correcting issues. Contracts should cleanly accommodate these issues, simply.

- **Recognize that healthy QF development environment contributes to broader generation development and market competition.** QF activities expand the larger pool of market entrants, synergistic investment, potential RFP bidders, grid investors, and assets available for solving market issues (such as capacity shortages), both directly and indirectly. They also keep price pressure on utilities, as well as create incentives for IOUs to keep their RFP processes more competitive.
- **Recognize that disputes, complexity, and restrictiveness favor utilities.** QFs natural incentives to avoid disputes are significant. For utilities, all delays, costs, and uncertainty are to the utilities' advantage—undermine PURPA, reduce its investability and functionality.
- **Reject “Small Projects Only” arguments by utilities.** 80 MW in 1978, when much less generation existed, was big, not small, effectively a multiple of that size equivalence today. PURPA explicitly intended to allow projects of meaningful scale. Indeed larger, healthy project scales make it more likely QF developments might also pursue RFP bid and bilateral options. More options lead to healthier markets.
- **Recognize lack of utility consequences.** Utilities functionally bear no consequences for obstructing PURPA or failing to engage in good faith. Damages should apply to the IOUs. This is particularly worth noting as they seek to add damages to QFs, and narrow flexibility, while increasing risks and exposures to their own performance.

### **Resolve Policy Changes Before Contract Terms**

OSSIA strongly agrees with the Community Renewable Energy Association (CREA), the Northwest & Intermountain Power Producers Coalition (NIPPC) and the Renewable Energy Coalition (REC) in their comments filed on April 29, 2021 that the better approach for this docket would be to come to an agreement on or otherwise get the Commission to resolve substantive policy prior to negotiating individual contract terms. This process could get really bogged down in negotiating individual contract terms, which would be time intensive and costly for all stakeholders, not to mention that it would also tend to disadvantage stakeholders that are not represented by counsel.

Overall, moving into PPA document editing is inappropriate in multiple ways. The template itself is controversial, and not agreed. More significantly it distracts and redirects valuable focus and bandwidth, prematurely, when the policy issues themselves must be crisply and cleanly decided and discussed. Editing language on non-agreed issues, particularly while simultaneously introducing and entire new document, with new unreviewed issues, and mutually interactive aspects, aside from the



distraction of the immense significance of the language choices (and sensitivity to every word), is distraction and not constructive to a focused outcome on the policy issues. PPA drafting, as is customary, should follow, as a separate stage, not precede, the commercial and policy terms finalization. This allows focused language editing for consistency, without creating concerns that language choice itself subverting policy/commercial intentions and/or creating new disputes and delays before policy resolution is timely completed.

We recommend finishing the policy issues and decisions first, ideally by the PUC deadline, then working on the PPA itself afterwards.

### **Clarify Treatment of Non-Standard/Negotiated PPAs**

OSSIA is concerned about how this docket impacts non-standard or negotiated power purchase agreements (PPAs).

In the negotiation of non-standard contracts, utilities often point to a specific term used in the standard contract and indicate that it is required if it is a term that is favorable to the utility but then propose more onerous terms than comparable standard PPA terms when the standard PPA language is not favorable to the utility.

In that context, this docket will unavoidably have an impact on non-standard contracts. The docket must provide clarity wherever possible.

Therefore, the scope of this docket should be expanded to the degree that it is necessary to clarify which standard PPA terms the utility or a QF are permitted to insist upon in a non-standard PPA—or at a minimum to specifically clarify which terms are standard contract specific versus OPUC QF policies, as there is a difference. This is particularly important given that non-standard contracting may be the predominant activity area for QFs going forward; it would be a shame if all this effort from this docket failed to provide clarity on key issues going forward.

It merits further discussion at a minimum. We would recommend a review of the terms in this context as a focused workshop exercise.

### **Overarching Concerns With the Draft Contract**

The draft contract attached to the Staff Proposal (PacifiCorp's Washington PPA) is long and complex, spanning 40 pages not counting the exhibits. In contrast, Portland General Electric's (PGE) Oregon



standard contract is only 17 pages<sup>1</sup> and even PacifiCorp's Oregon contract is only 27 pages.<sup>2</sup> PacifiCorp's Washington PPA includes multiple cross-references, defined terms, and provisions that interact with one another. It would take a significant amount of time and bandwidth (and legal expertise) to even understand how various provisions work together to bring about a certain policy goal, let alone suggesting potential redlines to the document to bring it into compliance with Oregon law and policy, while also considering how those redlines might impact all the other interrelated contract provisions.

The contract is also borrowed from PacifiCorp's implementation of Washington State's policies and not well-suited for Oregon. First, Washington only recently updated its policy to require standard contracts. This is the first standardized contract PacifiCorp has had on file with the Washington Utilities and Transportation Commission (WUTC). It has not been tested for financeability.

Second, the contract reflects a different state's policy. Not only would stakeholders need to review the contract regarding the specific policy *changes* contemplated in this docket, but also to make sure it complies with preexisting Oregon policy decisions that are not contemplated to change in this docket. The contract should not inadvertently change Oregon policy because such an outcome would lead to litigation. Parties would likely dispute whether such a policy change was intended by the adoption of the new standard contract.

Most importantly, the PUC should not be creating new risk by adopting an entirely new contracting platform. Oregon's PPAs have well-known histories, issues, and a track record of being successfully financed in Oregon.

Finally, as an Oregon-focused organization, OSSIA was not involved in any of the Washington proceedings to approve this contract. OSSIA shares the concerns CREA, NIPPC and REC noted including that Washington has a history of far less QF activity, other constraints such as a less viable market and that fewer QF and WUTC staff resources were invested into getting that contract exactly right. Oregon, in contrast, has historically had more QF contracting activity, and the Oregon Commission and Staff have a breadth of experience on PURPA matters. Oregon need not lean on another state's PURPA implementation efforts but is well-equipped to implement PURPA in its own way consistent with past Commission orders and current policy proposals.

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[https://assets.ctfassets.net/416ywc1laqmd/6BkeRZ0p3HBy6JSSDJuKVO/575596768981a6bae35813a771018d3f/contract\\_201\\_in\\_system\\_variable.pdf](https://assets.ctfassets.net/416ywc1laqmd/6BkeRZ0p3HBy6JSSDJuKVO/575596768981a6bae35813a771018d3f/contract_201_in_system_variable.pdf).

<sup>2</sup> [https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Power\\_Purchase\\_Agreement\\_for\\_New\\_Firm\\_QF\\_And\\_Intermittent\\_Resource\\_with\\_MAG.pdf](https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Power_Purchase_Agreement_for_New_Firm_QF_And_Intermittent_Resource_with_MAG.pdf).



## Policy Recommendations

OSSIA offered policy recommendations for this docket in comments filed on March 30, 2021 and briefly re-states those here, with additions. OSSIA supports improvements to the PURPA contracting process and contract terms that fosters a robust PURPA market in Oregon. It is essential that the State of Oregon continue to drive towards greater decarbonization, mobilizing the variety of ways we can get there, while supporting energy resiliency. As such, OSSIA recommends:

1. Reasonable changes to the PPA contracting process so long as changes do not result in unreasonable conflicts with the interconnection process;
2. Increasing to 25 or 30 year fixed-price PPA terms;
3. Requiring that a legally enforceable obligation be established when a QF submits a signed PPA;
4. Increasing the size of QF eligible for a standard PPA to 20 MW;
5. Removing the 5-mile rule for standard PPAs and published avoided cost prices;
6. Providing QFs with 3-5 years from the date of contract execution to reach commercial operations with reasonable extensions up to 7 years due to interconnection or transmission delays;
7. Reasonable damages or penalties should be created for utility actions to evade PURPA obligations and failure to perform under the contract; PPAs and OPUC PURPA process are currently highly asymmetric in this regard, with IOU proposals here to further that imbalance with more restrictiveness;
8. **\*NEW\*** Remove from the annual May 1 avoided cost update, the option for utilities to update any inputs from an acknowledged IRP Update; and
9. **\*NEW\*** Provisions that allow a QF to provide back-up power and resiliency benefits.
10. **\*NEW\*** Ensure ALL QF output is paid for at the full price. Scheduling, billing/netting terms, etc. should not effectively result in a haircut to QF revenue.

Issues 1 and 3: OSSIA appreciates Staff's decision to forego the requirement for a QF to have a completed system impact study or cluster study supporting its in-service date in order to receive an executable PPA or from a LEO. OSSIA believes that the removal of this requirement will help to avoid unreasonable conflicts between the PPA process and the interconnection process. Staff noted that it removed this requirement in light of protections offered in PacifiCorp's Washington PPA. It was not clear exactly what in PacifiCorp's Washington PPA offered the protections Staff noted. It would be helpful if Staff could clarify.

Issue 2: OSSIA still recommends 25 to 30 year contracts and disagrees with Staff that this issue should be pushed to UM 2000. This docket is regarding standard contract terms and conditions. The length of the contract is integral to the contract itself and thus should be addressed here and lengthened, as recommended.



Issue 6: OSSIA strongly believes that QFs need further protections to obtain reasonable extensions to their scheduled commercial operation dates. This is OSSIA’s top issue for this docket. Staff recommends only allowing 3 years to reach commercial operations from contract execution and that any time longer than that will cut into the fixed price period, only up to a maximum of 4 years. Staff notes that this recommendation is for the protection of ratepayers, however, this concern is premised on the idea that the prices in the QF contract will always be higher than prices elsewhere. That is not always the case and PURPA itself contemplated that there will be fluctuations over time both over- and under-estimations. If prices in the QF contract end up being lower than prices elsewhere, then the ratepayer benefits. Avoided costs, after all, are based on the utilities’ own projection of what the price for energy and capacity will be.

Even if history were to show that prices in QFs contracts are always higher, that may not necessarily be the case going forward. This is especially true given that utilities are driving towards greater decarbonization amidst increasing capacity prices.<sup>3</sup> As climate change, wildfires, and transportation electrification change the way our loads look and decarbonization changes supply, we may very well be headed into a future where it may be more beneficial for ratepayers to keep a contract with a QF that just needs a couple more years to reach commercial operations, than for that project to fail and ratepayers be slapped with the price to acquire a different resource on a more expensive expedited schedule (or worse yet face blackouts).

Finally, there is a very real possibility that the interconnection process will not be capable of completion within three or even four years. In fact, PacifiCorp’s recent cluster studies have shown timelines indicating that it will take 5 years *after* the interconnection agreement is executed.<sup>4</sup> As such, OSSIA continues to advocate for contract that provide QFs with 3-5 years from the date of contract execution to reach commercial operations with reasonable extensions up to 7 years due to interconnection or transmission delays.

Issue 8: OSSIA also supports removing any updates made in the IRP Update from the annual May 1 avoided cost update. This process results in the utility having discretion to cherry pick which inputs to

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<sup>3</sup> See e.g. <https://edocs.puc.state.or.us/efdocs/HAA/haa15713.pdf> at page 1, 6 (entering a PPA for hydro resources will further PGE’s commitment to decarbonization and maintain reliability and affordability given that relative to 2014 “the market value for capacity has substantially increased.”)

<sup>4</sup> See *Generation Interconnection Transition Cluster, Transition Cluster Study Report, Cluster Area 9*, at 34 (Mar. 31, 2021) available at <http://www.oasis.oati.com/woa/docs/PPW/PPWdocs/TCA9CS.pdf> (“The Transmission Provider estimates it will require approximately 60 months to design, procure and construct the facilities described in the ERIS sections of this report following the execution of Interconnection Agreements.”).





update, and to not update others. It leads to disputes and wasted resources that would be better spent towards performing analysis and vetting inputs for the next full IRP.

Issue 9: OSSIA recommends that Commission policy adopted in this docket should allow QFs to provide back-up services to enhance local resiliency particularly in cases of forced outages. Resiliency is important for local and rural communities where outages may be more frequent or of a longer duration, yet these are often areas where electricity generators are located. There may be a variety of synergies, benefits, or value streams could theoretically be developed with projects. OSSIA understands that currently Oregon QF standard PPAs prohibit the sale of any output to anyone but the purchasing utility. By allowing this small change, we could dramatically improve resiliency in these rural and local communities sited near generators.

Issue 10: The Commission should clarify that all net output will be compensated at the full purchase. Netting should be on a monthly basis and there should not be unreasonable scheduling terms that effectively result in a “haircut” to QF revenue. Scheduling provisions should be consistent with typical industry practice such as BPAs scheduling practices.

Other Issues: OSSIA’s other policy recommendations above do not appear to be addressed in the recent Staff Proposal, and therefore OSSIA simply continues to assert that those be included.

## **Conclusion**

OSSIA strongly supports addressing policy issues first in this docket prior to negotiation or resolution of specific contract terms in order to make this docket more inclusive and less burdensome for stakeholders. On the specific policy issues, OSSIA recommends the Commission approve the recommendations noted above.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink that reads "Angela Crowley-Koch". The signature is written in a cursive style.

Angela Crowley-Koch