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June 9, 2021

VIA ELECTRONIC FILING

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

Re: AR 631 –Rulemaking to Address Procedures, Terms, and Conditions Associated with Qualifying Facilities (QF) Standard Contracts

Attention Filing Center:

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

Please contact this office with any questions.

Sincerely,

Alisha Till

Alisha Till
Paralegal

Attachment

**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' COMMENTS IN RESPONSE TO STAFF'S UPDATED PROPOSAL AND PARTIES' INITIAL COMMENTS**

TABLE OF CONTENTS

I. INTRODUCTION

Portland General Electric Company (PGE), PacifiCorp dba Pacific Power (PacifiCorp), and Idaho Power Company (together, the Joint Utilities) respectfully submit these comments in response to Staff's updated proposal filed on April 29, 2021[1] for changes to the Public Utility Commission of Oregon's (the Commission) implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA) contracting process and the terms for standard Power Purchase Agreements (PPAs) with Qualifying Facilities (QFs). These comments also respond to other parties' initial comments filed on March 30, 2021.[2] The Joint Utilities applaud Staff's efforts to balance the interests of utility customers and QFs, and greatly appreciate the opportunity to provide these written comments to help ensure that the outcome of this docket is consistent with PURPA's customer-indifference standard, which requires that utility customers remain financially indifferent to QF development.[3] In these comments, the Joint Utilities note areas of agreement and disagreement with Staff's updated proposal and parties' initial comments, highlight language that requires further clarifications, and submit their additional recommendations regarding standard PPA terms and contracting requirements.

For the reasons discussed below, the Joint Utilities recommend that Staff propose the adoption of a comprehensive standard QF PPA based on PacifiCorp's Washington standard QF

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[1] Updated Staff Proposal (Apr. 29, 2021).

[2] These parties include the Community Renewable Energy Association (CREA), the Northwest & Intermountain Power Producers Coalition (NIPPC), the Renewable Energy Coalition (REC) (together, the QF Trade Associations), as well as the Oregon Solar + Storage Industries Association (OSSIA) and NewSun Energy LLC (NewSun).

[3] *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 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).

PPA negotiated by PacifiCorp, NIPPC, and REC and approved by the Washington Utilities and Transportation Commission (WUTC) (the PAC/NIPPC/REC PPA)[4], as modified as appropriate to conform to Oregon law, rules and policy.

1. Standard Form Contract

The Joint Utilities support Staff's view that the PAC/NIPPC/REC PPA provides a "good starting point for discussion regarding contracting terms in Oregon" and could make discussions in this docket and others more efficient.[5] Modernizing the utilities' existing standard QF PPAs in Oregon to be consistent with current market-based terms and conditions is critical to ensuring that PURPA's customer indifference standard is met. To that end, there is real value in leveraging the comprehensive compromise that both PacifiCorp and developer trade associations NIPPC and REC found acceptable as recently as March 1, 2021.[6] As the PAC/NIPPC/REC PPA represents a settled compromise among PacifiCorp, NIPPC, and REC—all of whom are parties to this docket—the PAC/NIPPC/REC PPA would serve as an appropriate framework along with the Commission policy decisions in this docket to achieve a comprehensive agreement on a uniform Oregon standard QF PPA. For this reason, the Joint Utilities recommend that the Commission adopt a comprehensive standard QF PPA based on the PAC/NIPPC/REC PPA, and order that it be modified as needed to conform the terms and conditions to Oregon-specific laws, rules and policies as established by the Commission in this docket.

While the QF Trade Associations appreciate the Joint Utilities' proposal and agree that a single standard contract for use by all three utilities is preferable to the current status quo, they

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[4] *See* WUTC, Docket UE 190666, https://www.utc.wa.gov/casedocket/2019/190666.
[5] Updated Staff Proposal at 1.
[6] The parties filed the PAC/NIPPC/REC PPA on March 1, 2021, and the agreement took effect on March 11, 2021.

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Portland, OR 97205

ultimately oppose use of the PAC/NIPPC/REC PPA because (a) they believe that the process would be too time consuming and costly; (b) they would prefer for the Commission to retain an independent expert to develop a standard contract; (c) they claim that PAC/NIPPC/REC PPA represents a "utility-drafted document" rather than a compromise among parties; (d) there are provisions in the PAC/NIPPC/REC PPA that are inconsistent with Oregon law and policy; and (e) the PAC/NIPPC/REC PPA is too long for certain QFs.[7] The Joint Utilities fundamentally disagree with these arguments and urge Staff to support use of the negotiated PAC/NIPPC/REC PPA as the default standard contract subject to change based on Oregon law and specific policies established by the Commission.

First, the Joint Utilities dispute the notion that using the PAC/NIPPC/REC PPA as the basis for developing an Oregon standard QF PPA would result in a process that is too costly or time-consuming. On the contrary, leveraging a comprehensive agreement that has been agreed-upon by PacifiCorp and key QF parties would result in significant efficiencies. On this point, it is important to keep in mind that without the PAC/NIPPC/REC PPA, this docket is shaping up to address and resolve a number of critical discrete policy issues that have been the subject of dispute among the parties. However, if the Commission resolves only those issues, but does not adopt an Oregon standard QF PPA, the review, approval, and adoption of comprehensive QF PPAs will need to be completed in subsequent utility dockets.

In particular, PGE's filing seeking a comprehensive update to its Standard QF PPAs is pending in docket UM 1987; the current plan has been for the Commission to reinitiate that docket

[7] Joint Comments of CREA, NIPPC, and REC on Scope, at 2-3 (Apr. 29, 2021).

after this rulemaking is complete.[8] And it is worth noting that the QF parties have consistently resisted moving docket UM 1987 forward arguing that the process of approving a comprehensive filing is simply too costly and time-consuming.[9] Moreover, both Idaho Power and PacifiCorp have noted that they also require comprehensive updates to their Standard QF PPAs in Oregon, and they will therefore need to initiate dockets to gain approval of new PPAs if a standard form PPA is not adopted in this docket. Therefore, the stakeholders cannot avoid the urgently necessary work entailed in adopting new comprehensive QF PPAs. However, it would certainly be significantly more efficient to do so in one all-utility docket, using the PAC/NIPPC/REC PPA template agreement that has already been deemed acceptable by key stakeholders, including the QFs just months ago, and then making any changes that are required to comply with Oregon law and Commission policies. Contrary to the QF's suggestion, not adopting this approach that leverages the mutually agreed upon PAC/NIPPC/REC PPA would be significantly more costly and unnecessarily time consuming.

Second, the Joint Utilities disagree with the QF Trade Associations' recommendation that the Commission retain an independent expert to assist the Commission Staff and counsel to develop the standard contract.[10] Again, the Joint Utilities would point out that PacifiCorp, NIPPC, and REC successfully negotiated a comprehensive standard QF PPA that was filed and unopposed just three months ago, and did so without the assistance of outside experts and without WUTC

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[8] *See* Docket No. UM 1987, Ruling, Disposition: Proceeding Suspended (Dec. 23, 2019); *see also* Docket No. UM 1987, PGE Request to Update its Schedule 201 and Standard Power Purchase Agreements (Dec. 7, 2018).
[9] *See* Docket No. UM 1987, NewSun Energy LLC's Motion for Leave to Reply and Surreply to Portland General Electric Company's Reply on its Motion to Lift Suspension 2-3 (Jan. 28, 2021); Docket No. UM 1987, Northwest & Intermountain Power Producers Coalition, Renewable Energy Coalition, and Community Renewable Energy Association's Response to Portland General Electric Company's Motion to Lift Stay 6 (Jan. 15, 2021).
[10] Joint Comments of CREA, NIPPC, and REC on Scope, at 2.

staff involvement. Using that document as the basis for developing an Oregon standard QF PPA, the Joint Utilities believe that the parties can easily determine what modifications are necessary to comply with Oregon law and policies as established by the Commission.

Third, there is no basis for the QF Trade Associations' claims that the PAC/NIPPC/REC PPA is not a fair compromise, but instead a "utility-drafted" document that the WUTC did not approve but simply allowed to go into effect.[11] This position mischaracterizes the process by which the PAC/NIPPC/REC PPA was agreed upon by PacifiCorp and the QF parties. In fact, that document was negotiated by PacifiCorp and the QFs over a period of around eight months, with significant give and take on both sides. Moreover, while the developers could have opposed the final, negotiated PAC/NIPPC/REC PPA filed by PacifiCorp in Washington, they did not do so. In the end, the WUTC allowed the PPA to go into effect because it was in fact a balanced compromise.

The Joint Utilities are puzzled by the QF Trade Associations' attempts to disavow the reasonableness and fairness of the PAC/NIPPC/REC PPA, and do not see any substantive reasoning that could justify the developers' abrupt change in position. The only difference between the circumstances in Washington and Oregon is that standard contracts already exist in Oregon while they did not exist in Washington at the time negotiations took place for the PAC/NIPPC/REC PPA. The Joint Utilities do not see the existence of antiquated standard contracts in Oregon as a barrier to using the PAC/NIPPC/REC PPA as a basis for developing an Oregon standard QF PPA in this proceeding because, as stated previously, PGE, Idaho Power, and PacifiCorp have all noted that they require comprehensive updates to their standard QF PPAs in Oregon. Furthermore, the

[11] *Id.* at 3.

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fact that developers agreed to the PAC/NIPPC/REC PPA after lengthy negotiations with compromises on both sides demonstrates that the contract has been fully vetted and is an acceptable replacement for the standard form contracts here in Oregon. For these reasons, the Joint Utilities see no need to "reinvent the wheel" and continue to support the use of the PAC/NIPPC/REC PPA in this docket.

Fourth, while the Joint Utilities acknowledge that there will be some work involved to modify certain provisions in the PAC/NIPPC/REC PPA to comport with Oregon law and policy, this fact is not a reason to avoid leveraging the majority of the terms and conditions that *are* consistent with Oregon policy as drafted. To the extent parties believe that the PAC/NIPPC/REC PPA is inconsistent with Oregon law and policies, the parties should raise those policy concerns in docket AR 631. It would be inefficient and a waste of the limited resources of the parties, Staff, and the Commission to have the Commission address PPA policy issues in this docket only to allow parties to raise new substantive PPA policy issues as the utilities seek to modernize their standard QF PPAs. It is not unreasonable to require parties to raise substantive Oregon policy issues now rather than giving parties another chance to raise substantive PPA policy issues later.

Fifth, the Joint Utilities also disagree with the QF Trade Associations' claim that the PAC/NIPPC/REC PPA is "far longer than necessary for a standard contract for small QFs, which in and of itself is a deterrent to development and financing of small renewable energy facilities."[12] In fact, PacifiCorp recently executed two long form PPAs with two Washington hydro projects, each less than 2 MW, based on an earlier draft of what became the WUTC-approved PAC/NIPPC/REC PPA. While the Joint Utilities acknowledge that for the true "Mom and Pop

[12] Joint Comments of CREA, NIPPC, and REC on Scope, at 3.

QF" a long contract may seem daunting at the outset, in reality a clear and comprehensive contract is the best way to avoid costly disputes and litigation, for both QFs (including the small ones) and the utilities. Indeed, all parties are better off working from a PPA that addresses all crucial terms including informational requirements, milestones, obligations, security requirements, performance assurances, allowed changes from original facility or performance expectations, provisions for relief—such as cure periods and force majeure—and damages for non-performance and default. More importantly, in the Joint Utilities' experience, the vast majority of QFs are developed by sophisticated businesses, often with national or international footprints, who are accustomed to and recognize the benefit of long form, industry standard contracts.

In the Joint Utilities' experience, small QFs are more concerned about certain obligations, such as credit, security, and insurance obligations in the PPA rather than the number of pages in the PPA. The Joint Utilities acknowledge in some instances, upon request, that they have provided relief from these types of PPA contract provisions to very small QFs in states that do not implement standard contract forms for QFs. In addition, PacifiCorp made a compromise in the PAC/NIPPC/REC PPA negotiations in agreeing to provide relief from certain credit and security requirements for QFs of 2 MW or less. Given the Joint Utilities' proposal to adopt the PAC/NIPPC/REC PPA in Oregon with *Oregon-specific* modifications, the Joint Utilities do not oppose discussing similar carveout provisions for credit and security requirements in any Oregon standard QF PPA contract that is developed as a result of this proceeding, provided that the Oregon policies arising from this proceeding do not materially alter the balance of risk to the detriment of utility retail customers.

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2. Eligibility for Draft Standard PPA to Begin Contracting Process

Staff initially proposed 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).[13] In its updated proposal, Staff has revised the proof of site control requirement and informational requirements as discussed below.

A. <u>Site Control Requirement</u>

Staff's updated proposal accepts the QF Trade Associations' and NewSun's recommendation[14] to replace the requirement that QFs provide "evidence of site control" with a requirement that they provide "evidence of meaningful steps to seek site control, including, but not limited to, an option to lease or purchase the site or an executed letter of intent or exclusivity agreement to negotiate an option to lease or purchase the site."[15] Staff's implied rationale for this revision is to align the site control requirement with the position of the Federal Energy Regulatory Commission (FERC) in Order No. 872.[16] In Order No. 872, FERC clarified that while "a state could reasonably require that a QF demonstrate that it is in the process of…taking meaningful steps to obtain site control adequate to commence construction of the project at the proposed

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[13] Staff Letter to Participants at 3 (Jan. 15, 2021).
[14] *See* Joint Comments of CREA, NIPPC, and REC on Staff's Initial Proposal, at 2-4 (Mar. 30, 2021); NewSun's Initial Comments at 2 (Mar. 30, 2021).
[15] Updated Staff Proposal at 2.
[16] In Staff's updated proposal, Staff does not actually provide a rationale for this revision to the site control requirement. Therefore, the Joint Utilities respectfully request that Staff clarify its reasoning for this change.

location" in order to create a legally enforceable obligation (LEO), the state could not require a "QF to show that it has obtained site control or secured local permitting and zoning."[17]

As a general matter, the Joint Utilities support rules that require QFs to demonstrate substantial due diligence toward developing their projects before they are entitled to a draft PPA. Because obtaining site control is a fundamental initial step in the development process, the Joint Utilities believe that it is an appropriate requirement for determining eligibility for a draft PPA. That said, the Joint Utilities could support a proposal to scale back the site control requirement so long as developers are required to submit *unambiguous* documentary evidence of meaningful steps towards obtaining site control. Specifically, the Joint Utilities propose that, in order to be provided with a draft PPA, the QFs should be required to:

> provide documentary evidence of meaningful steps to seek site control including, but not limited to, documentation demonstrating 1) a ownership of, a leasehold interest in, or a right to develop a site of sufficient size to construct and operate the QF; (2) an option to purchase or acquire a leasehold interest in a site of sufficient size to construct and operate the QF; or (3) another document that clearly demonstrates the commitment of the grantor to convey sufficient rights to the developer to exclusively occupy a site of sufficient size to construct and operate the QF. <u>The provision of a letter of intent or other non-binding documentation of site control (such as an indication of interest to lease) or a qualitative description of the state of site control development, in and of themselves or together, are not sufficient to satisfy this required site control evidence</u>.

The provision by a QF developer of such eligible documentation will help demonstrate to a utility the non-speculative nature of the proposed project, thereby decreasing the risk of withdrawn projects and defaults, as well as the associated costs to retail customers.

[17] FERC Order No. 872, at 374 ¶ 685 (July 16, 2020), 07-2020-E-1.pdf (ferc.gov).

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B. **Informational Requirements**

In its updated proposal, Staff recommends adopting modified existing informational requirements from PacifiCorp's Schedule 37 for Oregon Standard Avoided Cost Rates Tariff (PacifiCorp's Schedule 37 tariff),[18] as well as two of the information requirements included in the Joint Utilities' initial comments. Specifically, Staff recommends adopting all the following informational requirements from PacifiCorp's Schedule 37 tariff, except for "status of interconnection":

> (a) demonstration of ability to obtain QF status; (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system; (c) generation technology and other related technology applicable to the site; (d) proposed site location; (e) schedule of monthly power deliveries; (f) calculation or determination of minimum and maximum annual deliveries; (g) motive force or fuel plan; (h) proposed on-line date and other significant dates required to complete the milestones; (i) proposed contract term and pricing provisions as defined in this Schedule (i.e., standard fixed price, renewable fixed price); ~~(j) status of interconnection or transmission arrangements~~; (~~k~~j) point of delivery or interconnection.[19]

In addition to the requirements from PacifiCorp's Schedule 37 tariff, Staff suggests adopting two of the information requirements recommended by the Joint Utilities in their initial comments: 1) specific data on latitude/longitude and site layout to allow evaluation of FERC's same site rule and Oregon's five-mile rule, and 2) for a QF with a battery storage system, clarification of the storage design capacity, storage system duration, net power output, and a description of the technology used by the battery storage system.[20]

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[18] PacifiCorp's Schedule 37 Standard Avoided Cost Rates Tariff, Section I.B.2., Qualifying Facilities Contracting Procedure; Process for Completing a Power Purchase Agreement, at 11 (Effective for service on and after February 26, 2020), 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.
[19] Updated Staff Proposal at 2-3.
[20] Joint Utilities' Initial Comments at 5-6 (Mar. 30, 2021).

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Portland, OR 97205

The Joint Utilities generally agree with Staff's proposal to use existing informational requirements from PacifiCorp's Schedule 37 tariff as modified by Staff, provided that Staff further amend its proposal to include requirements that the developer also provide: (i) an executed standard form interconnection study agreement and evidence that all related interconnection study application fees have been paid (or evidence that no study is required); (ii) a schedule of power deliveries; and (iii) evidence that the developer properly served the QF's FERC Form 556 in accordance with the requirements of the FERC rules. The Joint Utilities believe these additional requirements are reasonable and necessary for the reasons set forth below and look forward to addressing any of Staff's concerns regarding these proposed requirements at the next workshop.

i. Signed Interconnection Study Requirement

The Joint Utilities believe that to protect utility customers from speculative contracting activities, it is both reasonable and necessary that a QF demonstrate its serious intent to develop a facility—before the PPA process is initiated. Accordingly, the Joint Utilities recommend requiring a QF to provide a signed interconnection study agreement and proof that it has paid the related fees in order to receive a draft PPA. These requirements are not overly burdensome, are within the developer's control, and do not prevent the developer from establishing a LEO before the interconnection study is issued. Such steps are meaningful and show that the developer is committed to achieving interconnection and is moving forward with developing the project.[21]

[21] The Joint Utilities concede that this requirement should not require the study agreement to have been countersigned by the utility in the event the utility is the interconnection provider.

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Portland, OR 97205

ii. Schedule of Monthly Power Deliveries

Staff did not include in its updated proposal the Joint Utilities' recommendation to change the "schedule of monthly power deliveries" to "a 12x24 power delivery schedule."[22] The Joint Utilities urge Staff to reconsider this recommendation as a 12x24 schedule is necessary for typical utility resource and system balancing and planning, particularly with respect to understanding assumptions for daily dispatch and allowing utilities to accurately assess remaining capacity needs after successful contract execution. Moreover, 12x24 schedules are used to accurately calculate damages under applicable performance guarantees. For these reasons, 12x24 power delivery schedules are often incorporated into the PPA as an exhibit.[23]

Importantly, a 12x24 power delivery schedule requirement is also a reasonable market-based term that, in addition to being included in utilities' market-based PPAs, has been incorporated into certain of PacifiCorp's QF tariffs. For example, under PacifiCorp's Non-Standard Avoided Cost Rates in Oregon, QFs must provide documentation of "quantity, firmness, and timing of daily and monthly power deliveries (including project ability to respond to dispatch orders from the Company and maintenance schedule)."[24] Furthermore, in PacifiCorp's Washington Avoided Cost Purchase and Procedures for Qualifying Facilities, both Washington's standard and non-standard QFs are required to "[p]rovide monthly volume of energy (MWh) and 12 X 24 or hourly energy profiles" electronically in a spreadsheet, and if applicable, include the

[22] Joint Utilities' Initial Comments at 6.

[23] Information provided from a 12x24 schedule is also important in populating and syncing information in Exhibit A of the PAC/NIPPC/REC PPA.

[24] PacifiCorp Oregon Non-Standard Avoided Cost Rates, at 3 (effective Feb. 26, 2020), https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Non_Standard_Avoided_Cost_Rates_Avoided_Cost_Purchases_From_Eligible_Qualifying_Facilities.pdf.

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Portland, OR 97205

initial year's maintenance plan.[25] Most developers will have completed a 12x24 schedule profile for their own purposes to compare facility development costs to PPA contract prices received for both on-peak and off-peak hours of the day; therefore, this requirement will likely not result in additional work for QFs in most cases and should not be burdensome. For these reasons, the Joint Utilities again propose that a schedule of monthly power deliveries be incorporated into the informational requirements.

iii. FERC Form 556

Staff also did not include in its updated proposal the Joint Utilities' recommendation that any "QF that is required to file a Form 556 with [FERC] must also serve the form on the purchasing utility in accordance with the FERC rules, and…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."[26] The Joint Utilities request that Staff reconsider its position on this issue. The Joint Utilities' proposal will allow them to confirm that the QF requesting a PPA is eligible under PURPA, removing the possibility of misunderstandings or errors. Moreover, requiring the QF to provide its FERC Form 556 involves minimal effort, is not burdensome to developers, and affords utilities the opportunity to perform a threshold level of due diligence before beginning the contracting process.

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[25] PacifiCorp Washington Avoided Cost Purchase and Procedures for Qualifying Facilities, Section I.B., Table 1 at 3, and Table 2 at 5 (effective Jan. 1, 2021), https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates--regulation/washington/rates/QF_Avoided_Cost_Purchases_and_Procedures_for_Qualifying_Facilities.pdf.

[26] Joint Utilities' Initial Comments at 6.

3. Eligibility for Executable PPA

In its updated proposal, Staff removed the requirement that a QF must have received a Cluster Study or System Impact Study (SIS) indicating that interconnection within four years is feasible for the proposed project prior to obtaining an executable PPA. Staff supports this change by explaining its view that the eligibility and security requirements in the PAC/NIPPC/REC PPA provides adequate protections for utility customers.[27]

The Joint Utilities disagree with Staff's removal of the Cluster Study/SIS requirement. The receipt of an interconnection study with estimated dates for completion provides the QF and the utility with the best information demonstrating that the proposed project is feasible and can reasonably be completed by the scheduled commercial operation date (COD) chosen by the developer. The Cluster Study/SIS requirement is necessary to protect utility customers from bearing the risk of stale—and inflated—prices, and none of the eligibility or security requirements in the PAC/NIPPC/REC PPA provides an equivalent protection. For this reason and to comply with the requirement under PURPA that utility customers remain indifferent to the cost of QF development, the Joint Utilities recommend not only that the Cluster Study/SIS requirement in Staff's initial proposal be retained to enable utilities to determine whether the scheduled COD is reasonably supported—which ultimately bears on whether the QF is entitled to then-current pricing, but also that the rule stipulate that the interconnection study must demonstrate that interconnection is reasonably feasible within three years. Moreover, as discussed further below with regard to "Time to Construct" requirements, the rules should retain Oregon's current policy that a QF may select a scheduled COD no more than three years from PPA execution, consistent

[27] Updated Staff Proposal at 3.

with other states' PURPA policies and market-based PPAs, to prevent QFs from obtaining stale pricing in violation of PURPA's customer indifference standard. Together, these measures will ensure that QF developers cannot obtain options to sell power at inflated prices before completing the reasonable due diligence required to execute a 20-year contractual commitment.

Given that a one-year cure period is currently available to Oregon standard QFs,[28] these measures are of particular importance to protect utility customers from overpaying for power and costs associated with litigation and planning inefficiencies that often result from premature and speculative execution of PPAs, *i.e.*, "option" agreements for QFs that reasonable due diligence on the front end of the contracting process would reveal are not feasible.

The Joint Utilities also disagree with the QF Trade Associations' suggestions that (1) "[i]n lieu of [obtaining an interconnection study], the QF may agree to post a project development security of $25/kW of QF capacity ninety (90) days after PPA execution" or (2) the "QF may agree to a PPA under which the maximum fixed-price period and/or variable-price period begins on the scheduled commercial operation date in the PPA and may not be extended due to the QF's inability to achieve commercial operation by the scheduled commercial operation date except in the case of a utility-caused delay."[29] First, while an obligation to post security is generally protective of utility customers, as is the interconnection study requirement, the Joint Utilities believe that these

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[28] As stated in the Joint Utilities' initial comments, 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. 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.

[29] Joint Comments of CREA, NIPPC, and REC on Staff's Initial Proposal, at 9.

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Portland, OR 97205

requirements serve different purposes and are both necessary, independent of one another. That is, an interconnection study requirement serves a threshold due diligence purpose on the front-end of the process, ensuring project feasibility and preventing stale prices (*i.e.*, the developer's scheduled COD is reasonably supported and can occur within the applicable interconnection timeframe and by the outside regulatory date, currently three years), while the default security requirement is backward-looking by guaranteeing that the utility is made whole should the QF fail to meet the scheduled COD.

The interconnection study requirement prevents the developer from obtaining an "option" on pricing where it is unclear whether the project is even feasible. Without upfront due diligence afforded by the interconnection study requirement, utilities will be inundated with PPA requests for projects—regardless of whether the projects are feasible—when prices trend high, which ultimately could result in large-scale breach-of-contract problems. Even with a default security requirement in place, utilities would be expected to have to pursue developers to recover their damages and litigate to foreclose on such security. Moreover, even if utilities are successful in recovering such damages, default security will not cover all costs. For example, successful foreclosure on default security will not cover costs of litigation, the impact on utilities' energy planning processes, or the upfront cost and resources incurred while negotiating and entering into PPAs for QFs that ultimately are not constructed. Finally, execution of a high volume of speculative PPAs invariably leads to increased litigation as developers do not often abandon, without litigation, executed PPAs that hold out the false promise of substantial revenues and profits over a 20-year term.

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Second, as described in more detail in Section 8 below, the Joint Utilities disagree with the concept of "utility-caused delay" used both above and in the QF Trade Associations' recommendation that "the delay default provisions in the PPA must contain reasonable exceptions to the QF's obligation to pay damages in the case of a delay caused by the purchasing utility, and [therefore should] extend the fixed price and/or variable-price terms of the PPA to hold the QF harmless for the utility-caused delay."[30] This language is both vague and overbroad, arguably encompassing virtually any delay in the interconnection process, even where the utility acts entirely reasonably, and therefore this language is certain to spawn unnecessary litigation. Accordingly, should Staff consider alternatives to the interconnection study requirement, the Joint Utilities suggest that QFs be excused from performance only in the case of delays caused by utility default, consistent with the definition of "Excused Delay" in the PAC/NIPPC/REC PPA.[31]

To the extent utilities ultimately are required to deliver an executable PPA to a QF *before* receiving an interconnection study that reasonably supports the designated scheduled COD in the PPA, the Joint Utilities continue to maintain that the standard PPA should require a scheduled COD within three years of the execution date of the PPA and that the applicable PPA contain commercial terms that protect the utility in the event that the interconnection studies do not result in an in-service date that is within three years of execution of the PPA. Specifically, the PPA must include: (i) an interconnection study delivery requirement, and (ii) in the event the interconnection study so delivered does not reasonably support COD within three (3) years of the execution date of the PPA, the PPA should provide for termination of the PPA (with damages if such termination

[30] *Id.*
[31] See the definition of "Excused Delay" in Section 1.1 of the PAC/NIPPC/REC PPA (excusing QF's obligation to pay damages in the case of delay caused by utility default).

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

harms utility retail customers). Such provisions are critical to ensuring that the developer is responsible for the risk created by its decision to enter into a PPA before completing reasonable due diligence and having a completed interconnection study supporting the scheduled COD in the PPA.

Finally, the Joint Utilities acknowledge that language in FERC Order No. 872 suggests an interconnection study should not be required to achieve a LEO based on the fact that the purchasing utility "controls" the interconnection study process.[32] To the extent that this concern underlies Staff's decision to drop the interconnection study requirement, this reasoning should not extend to QFs with scheduled CODs occurring between the third and fourth year following the execution of the PPA. In other words, QFs seeking a scheduled COD occurring more than three years from the execution date of the PPA should be required to (i) provide a completed Cluster Study or SIS justifying the scheduled COD that (ii) shows that the COD is reasonably achievable by such date. This control is necessary to avoid speculative contracting and "options" for favorable pricing.

In addition, concerns regarding FERC Order No. 872 and LEO formation should not apply to 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, that delay is entirely outside the purchasing utility's control, and the QF's 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 whether that interconnection date reasonably qualifies the QF for the standard avoided cost pricing in place at the time.

[32] FERC Order No. 872, at 374 ¶ 685.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

4. Avoided Cost Updates

In the updated proposal, Staff recommends no change to current requirements that the utility file updated avoided cost prices one month after acknowledgement of the utility's Integrated Resource Plan (IRP).[33] Relatedly, Staff would retain the current requirement that utilities update avoided cost prices annually by or on May 1.[34] The Joint Utilities agree with Staff's proposal not to change these requirements.

5. Timelines for Contracting Process

Staff recommends in the updated proposal that once the QF has met all eligibility requirements and requested an executable PPA in writing, the utility has 10 business days to provide a new draft PPA—in contrast with the current 15-day interval.[35] Staff reasons that while "15 business days may make sense for [an] initial draft of PPA, the need for a 15-business day turnaround as the contracting progresses is not evident to Staff."[36] Staff further asserts that "[i]f the utilities believe they are unable to process the PPAs within 10 days as is proposed, they have the option of revisiting their internal contracting process or allocating resources in order to meet the new deadline of 10 business days."[37]

The Joint Utilities continue to disagree with Staff's proposal to require utilities to provide an executable standard PPA to the QF within 10 business days, once the QF has met all eligibility requirements and asked for an executable PPA in writing. In the Joint Utilities' collective

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[33] Updated Staff Proposal at 4; OAR 860-029-0040(4)(a); OAR 860-029-0085(1).
[34] Updated Staff Proposal at 4; OAR 860-029-0085(4).
[35] *In the Matter of Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174, at 24-28 (May 13, 2016), https://apps.puc.state.or.us/orders/2016ords/16-174.pdf.
[36] Updated Staff Proposal at 4.
[37] *Id.*

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Portland, OR 97205

experience, 15 business days is a reasonable and necessary timeline for preparing and reviewing an executable standard PPA, collecting any missing data for PPA exhibits, and performing a final check to confirm that all the QF's documents are complete and accurate. Conversely, there is no evidence on the record of this or any other proceeding suggesting that a 15-day interval is either unreasonable or causes any harm to the QFs. For this reason, the current turnaround time should be retained.

The QF Trade Associations' initial comments recommend a different, dual-tiered approach to turnaround times. Specifically, the QFs suggest that if a QF requests substantive changes to a draft PPA, the utility has 10 business days to provide a new draft, while if the QF requests non-substantive changes to the draft PPA, such as a correction of typos, the utility has five business days to provide a new draft PPA.[38] Staff does not support this approach, and the Joint Utilities agree that distinguishing between the turnaround time for revisions to a PPA that are non-substantive and those that are not (*i.e.*, typos) is unconstructive because of the likelihood of disputes about whether the change is substantive or non-substantive.

However, in the event that Staff continues to recommend a 10-day turnaround, the Joint Utilities suggest that the QF be provided a replacement draft PPA within a fifteen (15) business day period, instead of the requested executable PPA in a ten (10) business day period, in the event that the QF requests one of the following types of changes to the initial draft PPA: (1) a change in electrical generating equipment that increases power production capacity by the greater of 1 MW or five (5) percent of the previously certified capacity of the QF;[39] (2) a change in ownership in

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[38] Joint Comments of CREA, NIPPC, and REC on Staff's Initial Proposal, at 18.
[39] FERC Order No. 872, at 309 ¶ 550.

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Portland, OR 97205

which an owner increases its equity interest by at least ten (10) percent from the equity interest previously reported;[40] (3) an addition or change in the battery system of a project; and (4) any other change with respect to the QF that triggers a requirement under applicable FERC rules that the developer amend the FERC Form 556 on which the QF relies for QF eligibility, provided that in the case of clause (4), the utility should not be required to issue a revised draft PPA until the later of the expiration of the fifteen (15) business day period following the developer's request for an executable PPA and the fifteenth (15th) business day following the date on which the QF delivers to the utility an amended FERC Form 556 that corrects the applicable non-conformities. Any of these changes would require significant time for utility review and revision, which may be impossible to complete in 10 days.

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

Staff continues to support its initial proposal: if a SIS or Cluster Study shows an interconnection completion date between three and four years after PPA execution, the QF has the unilateral right to select a scheduled COD up to four years after PPA execution provided that the fixed-price term will be shortened every month in the interval between PPA execution and the scheduled on-line date that is after three years.[41]

The Joint Utilities disagree that it is appropriate to allow QFs to lock in avoided cost prices a full four years before deliveries commence. Any rule that allows them to do so ensures that some QFs will be paid stale prices, which risks significant overpayment by utility customers in violation

[40] *See id.*
[41] Updated Staff Proposal at 5.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

of the "just and reasonable" requirement and PURPA's customer indifference principle.[42] Instead, a QF should be allowed to select a COD no more than three years from contract execution. This approach is consistent with non-standard QF requirements in Idaho, Wyoming, and Utah where the COD must be within thirty (30) months of the PPA execution date, as well as under the approved PAC/NIPPC/REC PPA where the scheduled COD must be within three (3) years of PPA execution.[43]

Staff has argued that, under its proposal, any harm to utility customers related to stale pricing could be effectively offset by shortening the fixed price term for every month that the scheduled COD exceeds three years after PPA execution. The Joint Utilities appreciate Staff's efforts to address their concerns, but nevertheless still believe the proposal is insufficient to adequately protect utility customers because merely shortening the fixed period by months or even a full year bears no relationship to the harm that stale pricing could cause retail customers.

As stated in the Joint Utilities' initial comments, 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. 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

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

[43] *See* Section 2.1 of the PAC/NIPPC/REC PPA.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

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. Staff's assumption that harm to customers due to stale prices is equal to customer savings resulting from a reduction of the fixed-price term is therefore inaccurate. Thus, Staff's proposal does not sufficiently address Joint Utilities' stale pricing concerns.

If Staff nevertheless wishes to recommend that QFs may select a COD up to four years from PPA execution, the Joint Utilities recommend an additional provision: a QF should be allowed to select a COD past three years, but to a maximum of four years from contract execution, *only if* that COD is supported by a *completed* SIS indicating interconnection will be complete by the date in the PPA.

In its initial comments, NewSun argues that a QF should be permitted to select a scheduled COD three years from the date of PPA execution, unless longer is shown to be necessary, but no longer than five years.[44] The Joint Utilities strongly oppose NewSun's 5-year timeframe recommendation as it would harm utility customers by locking in stale avoided cost prices and

[44] NewSun's Initial Comments at 3.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

agree with Staff that a "five-year delay between PPA execution and scheduled COD is too long a delay to be standard option"[45]

While the QF Trade Associations generally agree with Staff's proposal to allow a QF to select a COD up to four years out if supported by an interconnection study, the QFs request an additional provision allowing them to "request at PPA execution scheduled COD and commencement of the fixed-price period *in excess of three years after PPA execution*, and the utility shall not unreasonably withhold consent to such request *if the QF presents the utility with a reasonable justification* for such period in excess of three years, such as a resource type that requires longer than three years to develop or a utility-caused error or omission that has delayed development."[46] The Joint Utilities oppose this proposal. Without an outer limit on the timeframe between PPA execution and scheduled COD, risks to utility customers of locked in stale prices increase substantially. Such an overly broad and vague exception that allows the QF to select a scheduled COD any number of years from PPA execution so long as the QF presents "reasonable justification" is unworkable and would lead to increased litigation.

Moreover, as discussed in further detail in Section 8 below, the Joint Utilities again reject the use of the ambiguous concept of "utility-caused delay" as an excuse for non-performance by a QF.

7. Contract Term

For the Contract Term provision, Staff continues to support its original proposal that the QF be allowed to select a 20-year term contract with a 15-year fixed-price period, except when the

[45] Updated Staff Proposal at 5-6.
[46] Joint Comments of CREA, NIPPC, and REC on Staff's Initial Proposal, at 21 (emphasis added).

QF elects a scheduled COD more than three years after contract execution.[47] While Staff acknowledges the QF Trade Associations' proposal that QFs retain ownership of renewable energy credits (RECs) in the last five years of the 20-year PPA,[48] Staff believes this issue falls within the scope of docket UM 2000's discussion of avoided cost prices and is not within the scope of docket AR 631.[49] Staff further believes that at this point, OSSIA's,[50] NewSun's,[51] and the QF Trade Associations'[52] recommendations regarding contract length are better suited for docket UM 2000. The Joint Utilities agree with Staff that REC ownership and contract length are issues best determined in docket UM 2000.

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

The Joint Utilities provide their response to (a) Staff's proposed changes made to provisions regarding excused delays; (b) at the request of QFs, provide further detail regarding information needed to satisfy the Joint Utilities' suggested status update requirement; and (c) respond to OSSIA's suggestion in its initial comments that the Commission should impose "[r]easonable damages or penalties for utility actions to evade PURPA obligations."[53]

A. <u>Excused Delays</u>

In its updated proposal, Staff withdraws its initial recommendation to waive delay damages if the QF provides advance notice that it will not meet its scheduled COD.[54] The Joint Utilities

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[47] Updated Staff Proposal at 6.
[48] Joint Comments of CREA, NIPPC, and REC on Staff's Initial Proposal, at 23-24.
[49]Updated Staff Proposal at 6.
[50] OSSIA's Initial Comments at 1 (Mar. 30, 2021) ("Increasing to 25 or 30 year fixed-price PPA terms.").
[51] NewSun's Initial Comments at 4 ("The fixed-price contract term should be 25 years or longer in line with utility requests for proposals (RFP), and it should, at a minimum, not be shorter than RFP PPAs.").
[52] Joint Comments of CREA, NIPPC, and REC on Staff's Initial Proposal, at 21-24 (recommending that "the Commission should provide for 20-year fixed-price power sale terms").
[53] OSSIA's Initial Comments at 1.
[54] Updated Staff Proposal at 7.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

support this change, which is required to protect retail customers from potential financial harm caused by a developer's failure to satisfy its obligation to achieve COD as scheduled. As the Joint Utilities have argued, notice of delay in most cases will not allow the utility to avoid market harm.

However, the Joint Utilities object to Staff' adoption of the QF Trade Associations' proposal that the standard form PPA contain provisions exempting the QF from delay damages and extending the fixed-price or variable-price period to hold the QF harmless for delays "caused by the purchasing utility."[55] To be clear, the Joint Utilities do not oppose the general proposition that QFs should be protected from paying delay damages (or a shortened fixed-price or variable-price period) caused by action or inaction on the part of the utility that constitutes a default under the PPA or a violation of a tariff. For this reason, the Joint Utilities support the provisions of the PAC/NIPPC/REC PPA that allow the QF to avoid damages or other consequences caused by a defined "excused delay." Under the PAC/NIPPC/REC PPA, an "Excused Delay" means:

> the failure of Seller to achieve Commercial Operation on or before the Scheduled Commercial Operation Date, but only to the extent such failure is caused by an event of Force Majeure or an Event of Default by the Utility, a default by the Utility under the Generation Interconnection Agreement or related interconnection study agreement(s) for Seller's Facility, including a default resulting from any breach by the Utility of any obligation to meet a material deadline included in such agreement(s), or the Utility's violation of applicable tariff provisions governing the interconnection of Seller's Facility; provided that the duration of any Excused Delay shall not extend to any period of delay that could have been prevented had Seller taken mitigating actions using commercially reasonable efforts.[56]

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[55] *See id.*; *see also* Joint Comments of CREA, NIPPC, and REC on Staff's Initial Proposal, at 25-27 (recommending the following provision: "Notwithstanding the above requirements, the delay default provisions in the PPA must contain reasonable exceptions to the QF's obligation to pay damages in the case of a delay caused by the purchasing utility, and that extend the fixed-price and/or variable-price terms of the PPA to hold the QF harmless for the utility-caused delay").

[56] *See* Section 1.1 of the PAC/NIPPC/REC PPA.

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Portland, OR 97205

On the other hand, the QF's term—"delays caused by the purchasing utility"—is vague and likely to lead to unnecessary litigation over its meaning. Where the purchasing utility is also the interconnection provider, it is involved in virtually every step of the interconnection process from studies to design through contracting and construction. With millions of dollars on the line associated with these long-term PPAs, this broad construction would allow QFs to argue that virtually every delay in meeting the scheduled COD is "caused by the purchasing utility," likely leading to costly and time-consuming litigation.

Second, as stated above, the language "delays caused by the purchasing utility" is overly broad and would hold QFs harmless for delays that should be their responsibility—or more precisely, should not be the responsibility of utility customers. For example, a QF that seeks to interconnect in a crowded or transmission-constrained location may face delays because of the need to conduct interconnection re-studies when other projects ahead of the QF withdraw from the interconnection queue. Such delays occasioned by the QF's siting decisions should not excuse performance by the QF. On the contrary, making the QFs responsible for the potential effects of their decisions regarding the location of their facilities, as well as related interconnection costs and scheduling delays, better aligns with the goal of avoiding speculative contracting and providing an incentive for developers to conduct reasonable due diligence before making significant long-term contractual commitments.

Finally, the concept of "excused delay" as used in the PAC/NIPPC/REC PPA reflects a more balanced approach. In addition to being clear and more objective, it is more beneficial to QFs than "delays caused by the purchasing utility" because it covers delays caused by force majeure events—as defined in the PAC/NIPPC/REC PPA[57]—which may be caused by events unrelated to the actions of the purchasing utility. This provides a significant additional benefit to QFs because a force majeure event would normally prevent termination but would not extend the fixed-price or variable-price period.

B. Milestones and Status Update

The Joint Utilities' Initial Comments advocated that QFs be required to provide the purchasing utility with regular monthly status updates on project development and construction status throughout the pre-COD period. These updates will enable the utility to monitor whether the QF is meeting critical development and construction milestones, and assist the utility in its planning processes.[58] During the April 7, 2021 Workshop, the QFs requested that the Joint Utilities provide further details regarding this requirement. The requirement to provide updates to which the Joint Utilities refer is set forth in Section 2.7 of the PAC/NIPPC/REC PPA (PacifiCorp's Right to Monitor) which states:

> During the Term, Seller will allow PacifiCorp to monitor and will provide monthly updates to PacifiCorp concerning (a) the progress of Seller regarding the acquisition, design, financing, engineering, construction and installation of the Facility, and (b) the contractors' performance of tests required to achieve Commercial Operation. Seller must provide PacifiCorp at least one hundred and twenty (120) days prior notice of each such performance test. Notwithstanding the foregoing, nothing in this Agreement will be construed to require PacifiCorp to monitor Seller's development of the Facility or to review, comment on, or approve any contract between Seller and a third party.

As further discussed below, this provision was agreed upon between PacifiCorp, NIPPC and REC, and the Joint Utilities do not believe it requires further modification or that there is an

[57] *See* Section 14.1 of the PAC/NIPPC/REC PPA.
[58] Joint Utilities' Initial Comments at 18-19.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

overarching policy reason to upset this previously agreed upon provision. However, in order to streamline the provision of such updates, the Joint Utilities would support the addition of a "Form of Monthly Report" as an exhibit to the Oregon standard QF PPA in order to facilitate and ease the reporting requirement.[59]

In addition, the Joint Utilities urge Staff to include a requirement in its proposal that the Oregon standard QF PPA include a project schedule exhibit setting forth milestone dates for key pre-COD development milestones, including milestones for completion of security requirements, interconnection agreements, required permits, land rights, transmission service agreements, and commencement of construction, etc. If any milestone is not completed on or before the milestone date specified for that milestone in the project schedule, the monthly updates referred to in Section 2.7 of the PAC/NIPPC/REC PPA (PacifiCorp's Right to Monitor) should be used to (i) inform the purchasing utility of a revised projected date for the achievement of the milestone, (ii) inform the purchasing utility of any impact on the timing of the COD and on each other milestone, and (iii) provide the purchasing utility with a written report containing the QF's analysis of the reasons behind the failure to meet the original milestone deadline and describing the remedial actions that the QF agrees to undertake to ensure the achievement of the COD by the scheduled COD, and in any event no later than the end of the cure period. If the QF fails to meet a milestone ***and*** fails to provide the status update, the purchasing utility would provide a notice of default with a 30-day opportunity to cure.

[59] Similarly, the Joint Utilities would support the addition of a "Form of Quarterly Construction Progress Report" for purposes of facilitating QFs' compliance with Section 6.12.2 of the PAC/NIPPC/REC PPA (Other Information to be Provided to PacifiCorp).

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

With respect to Staff's proposed changes to Section 2.7 of the PAC/NIPPC/REC PPA (PacifiCorp's Right to Monitor), as indicated above, the Joint Utilities do not believe that there is an overriding policy reason to make revisions to this provision. Staff's proposal would eliminate the right of the purchasing utility to monitor progress and would require the QF provide the utility such updates once *every six months* instead of monthly. The Joint Utilities believe that such infrequent updates would frustrate the purpose of this requirement, which is to aid the utility in its planning process. For example, in PGE's experience, some QFs put in their milestones that the proposed project will not break ground until six months prior to the scheduled COD; in this case, requiring updates every six months would be useless during a critical developmental period of the project. To the extent Staff is concerned that a monthly requirement could be burdensome on QFs, again, the Joint Utilities point out that this requirement was agreed upon by NIPPC and REC in the case of the PAC/NIPPC/REC PPA. Moreover, as the Joint Utilities suggest above, a template form for the report could be added as an exhibit to the Oregon standard QF PPA in order to streamline reporting obligations for QFs.

C. <u>Damages</u>

In its initial comments OSSIA suggested that the Commission should impose "[r]easonable damages or penalties for utility actions to evade PURPA obligations."[60] The Joint Utilities oppose this proposal for two reasons. First, the Commission has repeatedly concluded that it generally lacks the jurisdiction to order a utility to pay monetary damages.[61] Therefore, OSSIA's proposal

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[60] OSSIA's Initial Comments at 1.

[61] *See, e.g.*, *B.R. v. Portland Gen. Elec. Co.*, Docket UCR 181, Order No. 17-257 at 11 (Jul. 13, 2017) ("In no case would such a remedy be damages awarded by this Commission. Although we have authority to order refunds where appropriate, we lack jurisdiction to grant money damages."); *Schaefer v. CenturyTel of Oregon., Inc.*, Docket UC 569, Order No. 01-157, 2001 WL 306832, at *1 (Feb. 8, 2001) (finding that no statute granted the Commission

is without any basis in law. Second, even assuming the Commission had authority to grant monetary damages, awarding damages based on "evasion of PURPA obligations" is too broad and vague a standard. Adoption of such a provision would inevitably result in litigation each and every time a QF believes that a utility has deviated in any respect from the Commission's PURPA implementation policies. Third, QFs have full rights to bring complaints before the Commission to enforce their rights under applicable statutes and rules. Importantly, OSSIA does not provide an explanation as to why the existing framework is inadequate. Accordingly, the Joint Utilities oppose OSSIA's suggested damages provision.

The Joint Utilities also disagree with Staff's deletion of the "Cost to Cover" definition in Section 1.1 of the PAC/NIPPC/REC PPA, which is seemingly a change made in order to provide for monthly damages. The Joint Utilities clarify that while damages are calculated on a daily basis, the QFs are invoiced monthly (*see* Section 2.6 of the PAC/NIPPC/REC PPA, Damages Invoicing). Therefore, the Joint Utilities believe that "Cost to Cover" should remain as defined: the positive difference, if any, between (a) the time weighted average of the Firm Market Price Index for each day for which the determination is being made, and (b) the Contract Price in effect on such days, stated as an amount per MWh. "Delay Damages" for any given day are consequently equal to (a) the Expected Net Output for the Facility, expressed in MWhs per year, divided by 365, multiplied by (b) the Cost to Cover. Under Section 2.6 of the PAC/NIPPC/REC PPA, QFs are

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authority to order a utility company to pay damages for alleged monetary loss resulting from a disputed disconnection of service); *Dolan v. U.S. WEST Communications, Inc.*, Docket UC 461, Order No. 00-105, 2000 WL 342784, at *2 (Feb. 17, 2000) (finding in complaint for failure to list a business line that "the Commission cannot grant monetary damages requested by Complainant for lost business opportunity. The Commission generally has no jurisdiction to award monetary damages."); *see also Re Amendment of OAR 860-023-0055 and OAR 860-034-0390, Telecommunications Service Standards*, Docket Nos. 316 and 322, Order No. 96-332, 1996 WL 773344 (Dec. 20, 1996) ("The Commission requires an explicit legislative delegation to act.…It would not have authority to impose general tort or contract damages beyond its current authority.").

then expected to pay the accrual of such delay damages *on a monthly basis*. Thus, Staff's proposed change is unnecessary.

9. Eligibility for Standard PPA – Nameplate Capacity Rating

The Joint Utilities agree with the substance of Staff's updated proposal 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."[62] Specifically, the Joint Utilities agree that the maximum production capacity of the facility should be used to determine the nameplate capacity. For clarity, the Joint Utilities recognize that for many solar resources, the facility level production is often limited by a facility component, namely the direct current (DC) to alternating current (AC) inverter. Consistent with the PAC/NIPPC/REC PPA, facility level generation capacity should be based on the maximum megawatt output, on an AC basis, when the facility is operated in compliance with an applicable interconnection agreement and within recommended equipment parameters.[63]

10. Eligibility for Standard PPA – Same Site Rule

In Staff's original proposal, Staff recommended to replace the current 5-mile rule and community-based/family-owned exemption with FERC Order No. 872 presumptions regarding same site standards.[64] After discussions with stakeholders, Staff updated its proposal to keep the 5-mile rule.[65] The Joint Utilities agree with Staff and other parties to keep the 5-mile rule.

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[62] Updated Staff Proposal at 8.
[63] *See* Section 1.1 of the PAC/NIPPC/REC PPA.
[64] Updated Staff Proposal at 8.
[65] *See id.*

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

11. Modification to QF Facility Prior to COD and After COD

Without any rationale, Staff's updated proposal generally adopts the QF Trade Associations' recommendations for treatment of increases in QF capacity. Specifically, Staff proposes that, for incremental generation attributable to incremental power production capacity up to the standard contract threshold, the QF should also continue to receive the standard prices in the original contract; for incremental generation beyond the standard contract threshold, Staff proposes that the QF should negotiate a supplemental PPA with negotiated pricing.[66]

The Joint Utilities object to Staff's proposed framework for QF modifications, which would allow QFs to receive outdated (and typically higher) avoided cost prices for increases in generation that may occur years after a PPA is executed. Staff's proposal would allow QFs to increase nameplate capacity up to a standard contract threshold—or otherwise significantly increase generation—while receiving an earlier vintage avoided cost price. If adopted, this approach would provide a QF with a sustained opportunity to increase volumes of must-purchase power, when profitable—an option that is not commercially available to non-QF sellers, or QFs or non-QFs in any other state in which the Joint Utilities do business under market-based PPAs—to the detriment of customers who would otherwise be in a position to benefit from lower-cost incremental resources. The Joint Utilities believe this proposal is problematic and wholly inconsistent with PURPA's customer indifference principle. If a QF seller wishes to expand its project nameplate capacity or make equipment modifications that significantly increase

[66] *See id.* at 9; *see also* Joint Comments of CREA, NIPPC, and REC on Staff's Initial Proposal, at 34-36.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

generation[67] after COD, the QF should be entitled to then-available contract pricing for energy associated with such incremental additional generation.

In addition to violating avoided cost and customer indifference principles, such a policy would create very real and problematic commercial consequences. For example, in Oregon the standard avoided cost prices are currently available for solar projects up to 3 MW, while standard avoided cost contracts are available to 10 MW solar projects under negotiated rates. Allowing solar projects to unilaterally increase the nameplate capacity to the standard contract threshold would create an obvious loophole in which a 3 MW project may enter into a contract with standard avoided cost prices and then expand the project to 10 MW to avoid any requirement to sell under negotiated rates. This clearly would subvert the Commission's intended policy to the detriment of retail customers.

Furthermore, such a change in Commission policy would allow a QF to contract for 1MW facilities with 15-year terms with the intention of expanding to 10 MW when executed contract prices exceed contemporaneous avoided costs. Moreover, if the Commission chose at a later date to increase the standard avoided cost threshold, Staff's proposed PPA language would enable QF sellers to significantly increase project size at original contract prices in obvious violation of avoided cost principles.

In addition to the concerns above, the Joint Utilities suggest that the Commission's standard avoided cost contract should distinguish, and provide reasonable limitations on, those modifications that increase nameplate capacity (MW) and facility expected annual generation

[67] For example, a wind QF might be "repowered" with replacement blades or other major components to gain efficiencies without increasing nameplate capacity; however, the utility would not have planned for this increase in output, and the incremental increase in generation should be priced at then-current avoided cost rates.

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Portland, OR 97205

(MWh). Given Staff and the Joint Utilities' recommendation to base nameplate capacity on a facility level AC basis, Oregon's avoided cost contract must differentiate and address modifications both pre- and post-COD that increase AC-based nameplate capacity and those modifications that leave AC nameplate unchanged but significantly increase expected annual energy through DC equipment expansions. To protect customers and adhere to avoided cost principles, QF sellers should not be able to increase the nameplate capacity of a facility or significantly increase the expected annual MWh energy volume under original contract prices even if AC nameplate capacities are left unchanged through facility modification. Accordingly, the Joint Utilities support a limitation on modifications to a facility that (i) do not allow an increase in the nameplate capacity of a facility and (ii) cap the increase in expected annual output at ten (10) percent (*see* Section 6.1 of the PAC/NIPPC/REC PPA). If a QF seller wishes to expand its project nameplate capacity or otherwise make equipment modifications to increase generation after COD, the QF may either enter into a new QF PPA for the incremental additional energy at then-available contract pricing or negotiate an amendment to the existing PPA to memorialize the updated pricing for the incremental additional energy.

12. Scheduled Outages

In its updated proposal, Staff suggests using Idaho Power's requirement for scheduled outages as a baseline, which provides that a "QF must provide annual written proposed maintenance schedule no later than Jan. 31 of each calendar year."[68]

The Joint Utilities propose instead that the Commission adopt more robust and comprehensive contract terms governing reporting and coordinating of outages, consistent with

[68] Updated Staff Proposal at 10.

those included in market PPAs as well as the PAC/NIPPC/REC PPA. Detailed and expanded contract terms for scheduled outages will benefit all parties by clarifying the parties' respective roles and responsibilities while allowing the utility to anticipate and plan for outages, including securing any necessary replacement generation.

As a general matter, the Joint Utilities propose that PPAs distinguish between the types of outages in order to require that QFs provide more and earlier information about outages when possible. As background, the North American Electric Reliability Corporation (NERC) categorizes outages as "planned," "maintenance" and "unplanned (forced)".[69] A planned outage is typically scheduled well in advance, is of a predetermined duration of at least several weeks, and occurs only once or twice a year.[70] Characteristic planned outages include turbine, pump, and boiler overhauls or inspections, and testing.[71] 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.

A maintenance outage can occur when circumstances require that the plant to be taken out of service prior to the next planned outage.[72] Unlike planned outages, plant operators do not plan for maintenance outages many months ahead of time; that said, an operator typically knows key details about the maintenance outages in advance of their occurrence and in fact such maintenance outages typically can be deferred beyond the next week.[73] Given these differences, it makes no

[69] 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.
[70] *Id.* at III-6.
[71] *See id.*
[72] *See id.* at III-6 – III-7.
[73] *See id.*

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Portland, OR 97205

sense to require a QF to provide notice of maintenance outages only once a year. Instead, 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 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 and any changes in the expected maintenance outage completion date and time.

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.

Operators generally have no significant advance notice of a forced outage. For this reason, the rules should simply require that the QF provide prompt oral notice of any forced outage resulting in more than ten (10) percent of the nameplate capacity rating of the facility being unavailable, along with details 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.

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

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five (5) percent of the nameplate capacity rating of the facility for the following day. This information is required from all resources as part of the Energy Imbalance Market (EIM).

13. Requirements for Minimum Delivery for Intermittent Resources (w/no Battery)

In the updated proposal, Staff continues to recommend that a "utility may not impose [a] minimum delivery requirement for [an] intermittent resource that has no associated battery."[74] While the Joint Utilities and QF developers have been able to achieve minimum delivery requirements for solar, wind and hydro resources in non-standard QF and non-QF contracts,[75] the Joint Utilities are willing to forego minimum delivery requirements for wind and hydro resources in the standard form PPA, consistent with the PAC/NIPPC/REC PPA, while keeping the minimum availability guarantees (MAG) for such resources. However, in the case of solar resources, a minimum delivery guaranty is *both* feasible and important to protect utility customers. Therefore, the Joint Utilities continue to advocate for a minimum delivery requirement—subject to a ninety (90) percent threshold, calculated monthly—instead of a MAG for solar resources.

Minimum delivery guarantees, also referred to as output guarantees, such as the agreed upon performance guaranty for solar set forth in the PAC/NIPPC/REC PPA, are feasible to provide because the net output of solar resources can be reliably estimated based on the size and location of the project. These guarantees provide important price protections for utility customers for under deliveries (*i.e.*, having to buy energy at market price) and are therefore required to hold utility customers harmless. Importantly, the avoided cost prices paid to QFs include compensation for both capacity and energy. Without a minimum delivery guaranty, utility customers pay for an assumed capacity performance that they may or may not receive. If utility customers pay for an

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[74] Updated Staff Proposal at 10.
[75] For example, see *infra* note 76.

assumed capacity performance that they do not receive, PURPA's customer indifference principle is violated unless there is a delivery or output guarantee to remedy such non-performance. Customer indifference is particularly an issue because utilities customarily obtain these guarantees in the market from non-standard QF and non-QF solar, wind and hydro projects.[76] To address QFs' concerns voiced at the April 7, 2021 Workshop, regarding the burden of committing to a minimum delivery requirement that can be impacted by natural disaster such as wildfires, the Joint Utilities clarify that QFs could seek relief from the minimum delivery requirement where events of force majeure are the cause of the failure to meet the requirement. For these reasons, a minimum delivery/output guarantee is a reasonable and necessary element of the commercial arrangement with solar QFs and should be incorporated into any Oregon standard QF PPA that is developed as part of this proceeding.

On the other hand, consistent with the PAC/NIPPC/REC PPA, the only performance guarantee for wind and hydro resources under 10 MW is a MAG.

14. Default Security

In the updated proposal, Staff withdrew its initial default security recommendation pending further discussion of terms in the PAC/NIPPC/REC PPA.[77]

The Joint Utilities continue to seek a requirement for pre- and post-COD security. This position is commercially reasonable and consistent with non-QF PPAs and non-standard QF PPAs. Security in these agreements range from $25 per kW to $200 per kW. It would not be prudent for a utility to contract with a counterparty for a 20-year term, with a valuation in the

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[76] For example, PGE has executed ten (10) negotiated PPAs since 2017 for solar, wind and hydro resources that have included a minimum delivery requirement.
[77] Updated Proposal at 10.

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Portland, OR 97205

millions of dollars, and not perform a credit worthiness check and require security. To provide an example of the potential risk, QF counterparties owed PGE nearly $1.2 million in 2018 and 2019 for delay damages. Individual projects were liable for up to $177,000.

The Joint Utilities have heard the QFs' concerns about their initial recommendation of $150 per kW for pre-COD security requirement and have reduced their recommendation to $100 per kW. The Joint Utilities propose that $100 per kW default be paid upon execution of a PPA, but that the security be reduced by $50 per kW upon execution of either the transmission or interconnection agreement.

The Joint Utilities also understand the concerns expressed by the QFs with the proposed post-COD performance assurance being calculated with the greater of Projected Power Replacement Costs and Projected Contract Costs or $50 per kW of the Net Available Capacity. The Joint Utilities would be willing to negotiate to remove the "greater of" and require post-COD security of only $50 per kW of Net Available Capacity.

Finally, in the April 7, 2021 Workshop, Staff and QFs requested that the Joint Utilities clarify the time period for determining damages. Current practice for the Joint Utilities is that damages are calculated 24 months (or 2 years) from the date of termination.[78] This is reasonable and reflects market practice.

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[78] *See* PacifiCorp Oregon Standard PPA, Section 11.3.3 at 19, https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Power_Purchase_Agreement_for_Existing_Firm_QF_Not_An_Intermittent_Resource.pdf (24 months from date of termination); Idaho Power Company Oregon Standard Energy Sales Agreement, Section 18.3.6.2 at 28, https://docs.idahopower.com/pdfs/AboutUs/RatesRegulatory/Tariffs/ORStandardAgreementIntermittent.pdf (24 months).

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

15. Insurance

In the redline of the PAC/NIPPC/REC PPA, Staff, inexplicably, continues to recommend 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, reasoning that a B+ rating "is the rating currently approved by Commission for this purpose" and it is "[n]ot evident [why] it must be increased." However, the Joint Utilities assert that a minimum rating of A- is industry standard and are prepared to provide evidence should it be useful to Staff. The Joint Utilities remain concerned that acceptance of insurance coverage from an insurer rated below the A- industry standard rating, a minimum rating that is met by most major, national insurers and was agreed to in the PAC/NIPPC/REC PPA, creates an unacceptable, preventable, and unnecessary risk 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. PacifiCorp has required, without objection from any QFs, 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 of at least A-.[79]

[79] 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).

In the Joint Utilities' experience, the above-described minimum rating requirement and the minimum insurance limits are consistent with market-based terms and conditions, as well as the PAC/NIPPC/REC PPA. With the exception of certain very small "Mom and Pop" QFs in other states where PacifiCorp has agreed to lower the minimum required umbrella coverage below the $5,000,000 minimum requirement, *i.e.*, as in the PAC/NIPPC/REC PPA, the Joint Utilities are unaware of any concerns raised by QF developers in negotiations or on the record of this or any other proceeding that either the A- minimum rating or the Joint Utilities' insurance coverage requirements exceed industry standard or are otherwise overly burdensome to meet. Finally, the Joint Utilities continue to support moving these and other insurance requirements to an exhibit to the PPA, as is the case in the PAC/NIPPC/REC PPA.[80]

16. Conditional Designation of Resource Notice Provision

The Joint Utilities propose that the Commission adopt for all QFs the conditional designation of network resource notice provision approved by this Commission for inclusion in the utilities' Community Solar Program PPAs, and also included in the PAC/NIPPC/REC PPA. This provision[81] protects customers from potentially expensive costs not accounted for in the current avoided cost pricing methodology. Specifically, the notice provision allows for additional discussions 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

[80] 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.
[81] *See, e.g.*, Section 4.2 of the PAC/NIPPC/REC PPA.

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Portland, OR 97205

utility after the PPA is executed shows that transmission-service-related network upgrades are required.

Within its updated proposal for this docket, Staff states the following regarding Section 4.2 of the PAC/NIPPC/REC PPA, entitled "Designation of Network Resource":

> *This provision may be appropriate for off-system QFs. However, Staff does not support this provision for on-system QFs.*

Beyond that margin comment, there is no further explanation in either Staff counsel's comments or Staff's updated proposal explaining why Staff has come to this conclusion regarding Section 4.2.

The Joint Utilities disagree that such a provision is only necessary for "off-system" QFs. On the contrary, this provision is critical to maintaining the customer indifference principles of PURPA, regardless of whether a proposed QF resource directly interconnects to the purchasing utility's system (*i.e.*, on-system) or interconnects to a third-party transmission system (*i.e.*, off-system). Because the administratively determined long-term fixed "avoided cost" QF PPA price does not take into account the associated transmission costs that could be incurred by the purchasing utility's retail customers associated with transmitting the QF power, the purchasing utility's QF PPA should reasonably include such a "safety valve" provision that at least ensures that this Commission is able to determine the appropriate allocation for such transmission costs between the QF and retail customers.

To the extent that Staff views these concerns to be moot or mitigated in light of the Commission's policy for allocation of interconnection-driven network upgrades, the Joint Utilities reiterate that the network upgrades that are identified in the interconnection application process do not always fully align with network upgrades that could be triggered in the application for network

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

transmission service. Importantly, this statement above remains true regardless of whether the interconnection service is what FERC would characterize under the Open Access Transmission Tariff (OATT) as "network resource interconnection service" or "energy resource interconnection service." Put simply, the outcome of docket UM 2032 in Oregon would not change the Joint Utilities' recommendation to retain this provision in its form of Standard QF PPA. Rather, the outcome of docket UM 2032 would only impact the *likelihood* (*i.e.*, not the *possibility*) of significant network upgrades being identified in the network transmission service application process.[82]

Finally, it is important to note that PacifiCorp has executed PPAs with on-system QFs that include this provision, both in Oregon and other jurisdictions,[83] and provisions similar to this have been included in PacifiCorp's non-standard QF and non-QF PPAs, including the form of PPA included in its recent 2020 All-Source Request for Proposals.

For example, PacifiCorp has executed a non-standard QF PPA in Oregon with the "Designation as Network Resource" provision as reproduced below.

[82] It is important to emphasize that this PPA provision addresses how the purchasing utility designates the QF PPA as a network resource of the utility, and therefore its eligibility to receive firm network integration transmission service. Such *transmission service*, including the costs and timing issues associated, can be wholly distinct from the costs and timing considerations associated with *interconnection service*. Furthermore, and importantly, while a QF's *interconnection* process is generally subject to the rules of this Commission, the process for arranging *transmission* service is subject to the rules and orders issued by FERC in its implementation of the Federal Power Act. Under FERC's pro forma OATT, transmission service requests are submitted and studied separately from interconnection service requests, and additional facilities or upgrades (beyond those identified in the interconnection studies and agreements) could be required for transmission service to be granted. Under the OATT's requirements, the transmission customer cannot submit its request to designate the new resource as eligible for network transmission service until the agreement is fully executed or the only condition of execution is the availability of transmission service. *See, e.g.*, PacifiCorp OATT, Section 29.2(viii).

[83] In addition to obtaining stakeholder agreement to the include this provision in the PAC/NIPPC/REC PPA, PacifiCorp recently has entered into a number of PPAs that contain this provision with small QFs in Idaho. Such Idaho PPAs have been approved by the Idaho Public Utilities Commission.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

Designation as Network Resource.

4.2.1 Within seven (7) days following the Effective Date, PacifiCorp will submit an application to the Transmission Provider requesting designation of the Facility as a Network Resource, thereby authorizing transmission service under PacifiCorp's Network Integration Transmission Service Agreement with the Transmission Provider. PacifiCorp will request an effective date for commencement of network transmission service for the Facility that is ninety (90) days prior to the Scheduled Commercial Operation Date. PacifiCorp will inform Seller of the Transmission Provider's response to the application described above in this paragraph within seven (7) days of PacifiCorp's receipt of such response from the Transmission Provider.

4.2.2 If PacifiCorp is notified in writing by the Transmission Provider that designation of the Facility as a Network Resource is contingent on PacifiCorp procuring transmission service from a third-party transmission provider, or will require the construction of transmission system network upgrades or otherwise require potential redispatch of other Network Resources of PacifiCorp (a "Conditional DNR Notice"), PacifiCorp will provide Seller the transmission study or other documentation from Transmission Provider, and the Parties will proceed as follows:

a) If the Conditional DNR Notice states that designation of the Facility as a Network Resource is contingent on PacifiCorp procuring transmission service from a third-party transmission provider, the Parties will follow the process set forth in Exhibit A to Oregon's Non-Standard Avoided Cost Rates Schedule as in effect on the Effective Date.

b) If the Conditional DNR Notice states that designation of the Facility as a Network Resource requires the construction of transmission system network upgrades or otherwise requires potential redispatch of other Network Resources of PacifiCorp, and the option provided in Section 4.2.2(a) is not identified in the Conditional DNR Notice, the Parties will promptly meet to determine how such conditions to the Facility's Network Resource designation may impact the Contract Price or other terms and conditions of this PPA. If, within thirty (30) days following the date of PacifiCorp's receipt of the Conditional DNR Notice, the Parties are unable to reach agreement on any necessary adjustments to ensure the Contract Price reflects an "avoided cost" price as determined by the Commission and PURPA, PacifiCorp will submit the matter to the Commission for a determination on what adjustments, if any, are appropriate as a result of the Conditional DNR

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

> *Notice. PacifiCorp will submit such filing with the Commission within sixty (60) days following the date of PacifiCorp's receipt of the Conditional DNR Notice.*
>
> *c) In the event of a Conditional DNR Notice, Seller will have the right to terminate the Agreement upon written notice to PacifiCorp and such termination by Seller will not be an Event of Default and no damages or other liabilities under this Agreement will be owed by one Party to the other Party; provided, however, that Seller's right to terminate the Agreement under this Section 4.2 will cease following (a) any amendment of this Agreement associated with addressing matters covered under this Section 4.2 or (b) PacifiCorp incurring costs at Seller's request in furtherance of addressing matters covered under this Section 4.2.*

Moreover, this Commission has approved a similar form of this provision in the Joint Utilities' form of Community Solar Program PPA (docket UM 1930).[84]

17. Additional Topics

The Joint Utilities believe that their comments above and the PAC/NIPPC/REC PPA address all the additional issues identified by Staff and other parties as documented in the updated proposal.[85] Nonetheless, the Joint Utilities address Staff's main additional topics and questions below, as well as addressing process issues related to Staff's redlines to the PAC/NIPPC/REC PPA and existing Commission rules that concern the standard form PURPA PPAs.

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[84] *See* Docket No. UM 1930, Order No. 20-122, Appendix A, Attachment A, P. 22 of 43, Section 3.1 & Attachment B, P. 4, Section 3.1 (Apr. 9, 2020), https://apps.puc.state.or.us/orders/2020ords/20-122.pdf.

[85] Staff Updated Proposal at 11-12.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

1) **Obligations of QFs and utilities related to scheduling.**

This topic is already covered in the Scheduled Outages section above. The Joint Utilities propose adoption of provisions already stipulated in Sections 6.5 (Outages), 6.6 (Scheduling), and 6.7 (Forecasting) of PacifiCorp's Washington form of standard QF PPA.

2) **What constitutes an excess delivery and utility's obligation to pay?**

The Joint Utilities propose adoption of provisions already stipulated in Sections 6.1 (As-Built Supplement) and 6.8 (Increase in Nameplate Capacity Rating) of PacifiCorp's Washington form of standard QF PPA. To the extent this topic is intended to address payment issues related to off-system QFs and differences between delivered energy and net output, the parties have not addressed in detail this topic to date in this informal phase. The Joint Utilities support the approach set forth in *Addendum W: Generation Scheduling Addendum* of PacifiCorp's sample contract for off-system QFs, which allows QFs to net over- and under-scheduling of energy that may occur during the monthly billing period.[86]

3) **Need for carve-out from certain contract provisions for very small QFs.**

Subject to maintaining an appropriate allocation of risk in any Oregon standard QF PPA, the Joint Utilities do not oppose discussing Oregon-specific carveout provisions for credit and security requirements that are negotiated at a certain capacity threshold. In

[86] *Power Purchase Agreement Between [Firm Qualifying Facility (new or existing) located in non-PacifiCorp Control Area, interconnecting to non-PacifiCorp system, with 10,000 kW Facility Capacity Rating, or Less, and uninterruptible transmission to the Point of Delivery] And PacifiCorp*, Addendum W: Generation Scheduling Addendum (effective Aug. 11, 2016), https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Power_Purchase_Agreement_for_Firm_Off_System_QF.pdf.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

addition, the Joint Utilities do not oppose discussing reduction of the $5,000,000 umbrella insurance requirement in the PAC/NIPPC/REC PPA for QFs rated at 500 kW or less.

4) **Process for existing QFs.**

The Joint Utilities propose that QFs requesting a replacement PPA be eligible for a new term of up to 10 years following the initial delivery date under the renewal PPA. Please see PacifiCorp's Washington standard form for existing/replacement QF PPAs, Section 2, as well as the definition of "Initial Delivery Date."[87] The Joint Utilities similarly recommend the adoption of this form for existing/replacement Oregon standard QFs, as modified to reflect Oregon law, rules and policies.

5) **QF and utility obligations re: test energy.**

The Joint Utilities propose that utilities should not be obligated to accept and pay for test energy that is attempted to be provided more than ninety (90) days from the Scheduled Commercial Operation Date. For any energy deliveries prior to the Scheduled Commercial Operation Date, such energy is paid at the applicable contract rate which is not the full Contract Price that is paid beginning on Commercial Operation Date.

6) **QF and utility obligations re: requirements before commercial operation date, i.e., As-Available Supplement, proof of necessary permits, etc.**

The Joint Utilities propose adoption of provisions addressing these issues already existing in the PAC/NIPPC/REC PPA, including the definition of Commercial Operation, as well as the provisions found in Sections 2.2 (Milestones), 3.2.3 (Required Facility Documents), 6.12.2 (Other Information), without modification.

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[87] PAC/NIPPC/REC PPA, FORM OF STANDARD QF PPA (5MW OR LESS)—ON SYSTEM Existing/Renewal Small Power Production Facility – FIRM Attachment B to Washington Schedule QFQF, Section 1.1.

7) **Staff's redline.**

The Joint Utilities reserve the right to comment further on the changes proposed by Staff in its redlined version of the PAC/NIPPC/REC PPA, many of which were not specifically included in or otherwise related to other issues addressed in Staff's proposal. Although the Joint Utilities have provided substantive comments on a number of the more material issues raised in Staff's redline, the Joint Utilities have not provided comments on all of Staff's proposed changes. Given the dynamic nature of Staff's proposal, based on comments, workshops, and proposal revisions that have not yet occurred, the Joint Utilities believe contract language should not be determined until after the Commission has issued an order adopting revised rules and policies and directed the utilities to incorporate them into the PAC/NIPPC/REC PPA to create an Oregon standard QF PPA, as described below. Otherwise, if Staff pursues a proposal that includes specific contract language, the Joint Utilities believe it is critical that the parties have the opportunity to comment on any drafting changes proposed by Staff in connection with its final rule and policy proposals.

8) **Incorporation of Proposed Rules with existing Commission policies and rules.**

Existing Commission policies governing the terms and conditions of the standard PURPA PPAs are reflected in existing Commission rules under Chapter 860, Division 29 of the Oregon Administrative Rules. In particular, OAR 860-29-0120 addresses several of the topics addressed in proposals made by Staff and other stakeholders in this docket. In order to avoid unwarranted confusion, the proposed rules in this docket should clearly set forth which of the existing rules are unaffected and which are superseded by the rules proposed in this docket. This clarification will help reduce uncertainty as the utilities

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submit compliance standard PPA forms that, under the Joint Utilities' proposal, will reflect the PAC/NIPPC/REC PPA as modified to incorporate the Commission's policies reflected in the rules adopted in this docket.

II. CONCLUSION

In the updated proposal, Staff notes that the PAC/NIPPC/REC PPA could be a good starting point for discussion regarding contracting terms in Oregon and agrees "with the Joint Utilities that discussing terms in the context of an actual PPA could be an efficient process."[88] The Joint Utilities agree. As discussed above, given that the PAC/NIPPC/REC PPA is the result of extensive negotiations and mutual agreement, the stakeholders can be assured that the terms and conditions are reasonable and fair and already reflect compromise by both sides. Moreover, adoption of a comprehensive Oregon standard QF PPA will obviate the need for further litigation that would otherwise be required to modernize the utilities' standard QF PPAs. Importantly, should the Commission order the adoption of an Oregon standard QF PPA that reflects the PAC/NIPPC/REC PPA, as modified to the degree necessary to comply with Oregon law and Commission established rules and policies, docket UM 1987, in which PGE has been seeking to update its standard PPA for over two years, would be resolved. Similarly, PacifiCorp and Idaho Power—which both see the need to modernize their Oregon standard contracts—would not be required to initiate separate dockets to do so. Adoption of a modified PAC/NIPPC/REC PPA would allow the Commission and parties to avoid the need for further dockets to address PPA policy issues which should be addressed in AR 631, and to avoid the need to develop detailed contract language, which has already been mutually agreed upon just months ago. These

[88] Updated Staff Proposal at 1.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

efficiencies far outweigh concerns voiced by the QF Trade Associations that the process to reach agreement on a standard contract would be too time-consuming and costly.[89] Accordingly, the Joint Utilities recommend that the Commission adopt a comprehensive Oregon standard QF PPA reflecting the PAC/NIPPC/REC PPA, and order that it be modified as needed to conform to Oregon law and Commission established rules and policies.

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[89] Joint Comments of CREA, NIPPC, and REC on Scope, at 2.

ATTACHMENT A

to

Joint Utilities' Response 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	