

**Renewable Energy  
Coalition**

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Via Email

Chair Megan Decker  
Commissioner Steve Bloom  
Commissioner Letha Tawney  
Oregon Public Utility Commission  
201 High St SE, Suite 100  
Salem, Oregon 97301

RE: Senate Bill 978 Comments

Dear Commissioners:

**I. INTRODUCTION**

The Renewable Energy Coalition (the “Coalition”) submits these comments responding to the Oregon Public Utility Commission (the “Commission”) request for written comments from the stakeholders explaining their priorities for the Commission’s SB 978 report to the Legislature (“Report”). The Coalition notes that the SB 978 process has been superbly and creatively managed by the Commission’s staff. In the end, while the various interest groups may retreat to their original firmly entrenched views, the SB 978 process has educated the stakeholders and allowed many of the parties to better understand the complexity of the current regulatory process and the legitimate interests of all those impacted by the current regulatory framework. Hopefully the Commission has also been reminded that it is the most important state regulatory agency impacting the energy economy, and that it needs to recognize that its regulatory role has broadened since it was first created in the 19th Century. To achieve the state’s energy policy goals,

the Commission must create a vision for itself that matches the role that it is and should be performing in the 21st Century.

The Coalition recommends that the Report: 1) educate the Legislature about the Public Utility Regulatory Policies Act (“PURPA”); and 2) propose administrative and legislative improvements that will re-set an equal balance between the utilities and independent non-utility generation owners, called qualifying facilities (“QFs”).<sup>1</sup>

Legislative changes that the Commission should consider include:

- Changing the Commission’s mission statement to explicitly consider the protection of QFs and other non-utility owned generators rather than only ratepayers and utilities;
- Strengthen the current goals and policies to protect and promote QFs into firm mandates with real requirements; and
- Strengthen the 8% community renewables mandate, and implement it with clarity and timeliness.

## **II. THE COMMISSION’S REPORT SHOULD EDUCATE THE LEGISLATURE ABOUT PURPA**

The Commission’s first goal should be to ensure that the Legislature understands what the Commission’s role and job is in regulating the electric energy industry, including its impact on non-utility owned IPPs. The Report should explain: 1) what PURPA is; 2) why the Commission implements PURPA; 3) a brief history of PURPA in

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<sup>1</sup> The utilities often characterize the balance under PURPA as between ratepayers and QFs. The Coalition rejects this premise. Ratepayers generally benefit when the utilities enter into contracts with QFs, and the real tension is between who owns new generation: the utilities or independent power producers (“IPPs”), including QFs and whether utilities can or can’t earn at rate of return.

Oregon; 4) a summary of its current PURPA policies and regulations; 5) the current challenges the Commission is facing regarding PURPA; and 6) how a better balance of interests between all parties can be accomplished, including process improvements to minimize the number of complaints filed with the Commission. The Commission should also evaluate itself in terms of how successful or not it believes that it has been in implementing PURPA.

The Legislature should understand that the existence of PURPA is largely because the current regulatory compact allows investor owned utilities an opportunity to profit on capital investments. In a free market, producers sell their goods and services to willing buyers that are interested in obtaining the best deal to meet their unique requirements. In a regulated monopoly world, the utilities are not willing buyers of QF or IPP power because they want to own the generation resources. They have successfully used the regulatory process to avoid purchasing the least cost and least risk generation simply because they will not own the generation. To overcome this utility economic incentive, PURPA forces a competitive market by ensuring that there are more generation providers than just the utilities. The utilities would still own and operate all the generation resources and there would be no wholesale competition, far less diversification of resources, and much higher cost and riskier generation, but for the existence of PURPA.

The Coalition recognizes that the Commission seeks to enforce PURPA and to balance the interests of QFs and utilities. The Commission's policies have had some limited successes with modest levels of QF development; however, the utilities won most of the battles under PURPA by keeping avoided cost prices artificially low for extended periods while acquiring resources, often ignoring well-established processes and

Commission orders, and as a result, the utilities are winning their war against QFs. Simply by using a nearly endless amount of ratepayer money, the utilities can win most of the battles by intimidating or financially exhausting individual developers, initiating endless regulatory proceedings to re-litigate issues, and needlessly prolonging litigation initiated by QFs. Despite the Commission's efforts and the adoption of a number of progressive and important policies (long contract terms, standard contracts, modest size thresholds for standard rates, etc.), the basic facts are that the Commission has allowed the utilities to win the PURPA wars.

PacifiCorp is a prime example of using the state and federal legislative process, and nearly continual regulatory assaults on PURPA in its six state service territories. The Oregon Commission allowed PacifiCorp to effectively administratively repeal PURPA in its service territory and to kill almost all new development and pushing existing projects close to, or actual, closure. The key pillars of PURPA development are:

- Long contract terms to obtain financing and weather low periods of avoided cost rates;
- Standard contracts and prices to prevent utility abuses in the negotiation process;
- Fair and accurate rates; and
- A settled and uniform institutional climate, including predictable times and manners for avoided cost rate changes, consistent application of PUC policies, and an understandable contracting process that prevents utility abuses and manipulation.

With PacifiCorp, the Commission has failed to ensure that rates accurately reflect its avoided costs. It is patently unreasonable for PacifiCorp's Oregon rates to be set so low while at the same time the company is engaged in the largest and most expensive resource procurement in its history. Specific examples of artificially low rates include:

1) allowing PacifiCorp to rely on QFs providing capacity value, but not paying them for their capacity; 2) setting rates that assume PacifiCorp will not acquire renewable resources for a decade when it has been attempting to acquire resources now; and 3) removing the large renewable rate during the same time PacifiCorp has been in a near constant effort to acquire new renewable generation for itself.

After almost forty years of successfully avoiding any meaningful compliance with PURPA, QFs have finally been able to enter into contracts with PGE. However, PGE has now began a process of trench warfare doing everything it can to ruthlessly kill each PURPA project regardless of its size through refusing to enter into PPAs, aggressive contract enforcement, surprise regulatory filings, and an extremely difficult interconnection process. Having to deal with a buyer of their product (PGE) that will do everything it can to put you out of business is in addition to the normal business risks that impact QF development.

In summary, the Commission should provide an accurate summary of PURPA's implementation in Oregon so that the Legislature can understand its key role in achieving the state's energy policies and goals and whether changes need to be made to provide more robust support for non-utility owned renewable resources.

### **III. THE COMMISSION'S MANDATE SHOULD INCLUDE GREATER PROTECTIONS FOR QFS**

Oregon law includes goals and policies for the Commission to protect and promote the development of QFs. Specifically, ORS 758.515 provides:

The Legislative Assembly finds and declares that:

(1) The State of Oregon has abundant renewable resources.

(2) It is the goal of Oregon to:

(a) Promote the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible; and

(b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest.

(3) It is, therefore, the policy of the State of Oregon to:

(a) Increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens; and

(b) Create a settled and uniform institutional climate for the qualifying facilities in Oregon.

The Commission's Report should recommend to the Legislature that these goals and policies be updated as mandates and obligations and explain whether and how the goals have been met previously. If the goals have not been met then the Commission's Report should explain why and what needs to change in order to comply with these policies were they to become mandates.

As explained in the Coalition's April 10 comments, the Coalition believes that the Commission's primary responsibility is to energy consumers in Oregon, but that its responsibility necessarily involves ensuring the energy markets are healthy and fair to all of its participants, including QFs. The Commission acts as if its statutory responsibilities do not include the protection and promotion of QFs. The Commission's mission statement currently states that it should:

Ensure that safe and reliable utility services are provided to consumers at just and reasonable rates while fostering the use of competitive markets to achieve these objectives.<sup>2</sup>

The Commission further describes its goals and purposes as:

Regulates customer rates and services of the state's investor-owned electric, natural gas and telephone utilities; and certain water companies. The Commission does not regulate people's utility districts, cooperatives or municipally-owned utilities except in matters of safety. The PUC ensures consumers receive utility service at fair and reasonable rates,

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<sup>2</sup> [https://www.puc.state.or.us/ousf/Pages/about\\_us.aspx](https://www.puc.state.or.us/ousf/Pages/about_us.aspx)

while allowing regulated companies the opportunity to earn an adequate return on their investment.<sup>3</sup>

This mission statement completely ignores the Commission's responsibilities under ORS 758.515, which often reflects how the Commission has put the interests of utilities above those of QFs. If the Commission is going to regulate and effectively decide whether QFs will be able to economically operate, then its statutory mission should explicitly include their protection. The Commission cannot fairly and impartially implement PURPA when it is statutorily biased in favor of the financial health and profit of utilities over the interests of their competitors.

#### **IV. CONCLUSION**

The Coalition appreciates the opportunity to submit comments and looks forward to reviewing the Commission's Report.



John Lowe

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<sup>3</sup> Id.