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**VIA EMAIL**

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**Re: AR 631 – Scope of Proposed Rules**

Dear Ms. Andrus and Ms. Moore:

Portland General Electric Company (PGE), PacifiCorp dba Pacific Power (PacifiCorp), and Idaho Power Company (Idaho Power) (together, the Joint Utilities) greatly appreciate the effort that Staff has taken to draft the proposed rules distributed to the Parties on July 14, 2021<sup>1</sup> related 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). The Joint Utilities were also grateful for the opportunity to discuss our thoughts and questions regarding the proposed rules with Staff and other stakeholders during the July 26, 2021 Workshop. At the Workshop, the Joint Utilities—as well as the QF developers—expressed concern that Staff had expanded the scope of the proposed rules to include very detailed and more technical contracting matters than the provisions that stakeholders had previously discussed.

**Topics That Should Be in the Scope of this Rulemaking**

In order to refocus the proposed rules and allow stakeholders adequate time to further assess and discuss issues before entering the formal rulemaking phase, the Joint Utilities propose

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<sup>1</sup> Staff Draft Rules for AR 631 (July 14, 2021).

that the scope of the rulemaking be limited to development of policies on the following topics, which were previously proposed by Staff, discussed in workshops and commented on by stakeholders:

- (1) Conditional Designation of Network Resources (DNR) for On-System Projects and Off-System Projects (New Rule #1)
- (2) Eligibility for Draft Standard Avoided Cost Prices and Purchase Agreements (New Rule #2)
  - a. Nameplate Capacity
  - b. Same Site Rule
- (3) Process for Procuring Standard Power Purchase Agreement (New Rule #3)
  - a. Evidence of Meaningful Steps to Obtain Site Control
  - b. Informational Requirements
- (4) Eligibility for Executable PPA (New Rule #3)
  - a. QF Has Satisfied Informational Requirements for Draft PPA
  - b. No Additional Revisions to Draft PPA are Requested or Needed
  - c. QF Has Submitted Written Request for Final Executable PPA
  - d. Interconnection Study Supporting Scheduled Commercial Operation Date (COD)
- (5) Standard Power Purchase Agreements (OAR 860-029-0120)
  - a. Overall Term
  - b. Time to Construct – Period between Effective Date and Scheduled COD
  - c. Fixed Price Period
  - d. Excused Delay – When it Applies and Scope of Relief
  - e. Cure Period for Failure to Achieve Scheduled COD and Other Events of Default
  - f. Delivery Point
  - g. Security
  - h. Insurance
  - i. Applicability of Minimum Availability Guarantee (MAG) and Damages
  - j. Applicability of Minimum Output Guarantee and Damages
  - k. Force Majeure (New Rule #6)
  - l. Carve-outs from Security and Insurance Requirements for Small QFs
  - m. Delivery of Interconnection Study that Does Not Reasonably Support Scheduled COD Following Effective Date
- (6) Default/Damages/Termination (New Rule #7)
- (7) Modifications to the QF Facility Prior to COD and after COD and Avoided Costs for Incremental Additional Net Output
- (8) Scheduled Outages (New Rule #9 – Sections 4 and 5)

**Topics That Should Not Be in the Scope of this Rulemaking**

For the reasons discussed above, the Joint Utilities propose that policies related to the following topics—which were not previously proposed by Staff, discussed in workshops or commented on by stakeholders — should *not* be included in the scope of the rulemaking:

- (1) Commercial Readiness Requirements (New Rule #4)
- (2) Payment for Off-System Deliveries (New Rule #5)
- (3) Scheduling (New Rule #9 – Section 8)
- (4) Billing (New Rule #10)

By indicating which items they believe should be in-scope in this rulemaking, the Joint Utilities do not intend to suggest that the policies or language proposed with respect to these items in the July 14, 2021 draft rules are acceptable to the Joint Utilities. Rather, the Joint Utilities believe that these items require a significant amount of additional vetting by Staff and stakeholders to ensure that the policies behind the rules are clear. In particular, the policies should be transparent so that the stakeholders understand how the rules balance the goal of encouraging QF development without running afoul of PURPA's customer indifference rule, *e.g.*, resulting in utility customers taking on developer risk or causing utility customers to subsidize developer projects. Moreover, as the policies in this rulemaking are developed, additional time will be needed to ensure that the rules effectuating such policies are not technically flawed or unclear, accurately reflect the proposed policies and are not internally inconsistent. Mistakes or poorly drafted rules could have significant negative consequences and may be challenging to correct in the formal phase of this proceeding.

The Joint Utilities reserve their rights to comment on the substance of the July 14, 2021 proposed rules, including any subsequent policy proposals or revised versions of the draft rules that Staff may distribute, consistent with the pending procedural guidance in this rulemaking.

Sincerely,



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