February 12, 2019

Via Email

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

RE: PURPA Investigation Comment
Regular Public Meeting February 14, 2019 Regular Agenda Item #4

Dear Commissioners:

The Community Renewable Energy Association, Northwest and Intermountain Power Producers Coalition, and Renewable Energy Coalition (collectively the "QF Industry Associations") submit these joint comments responding to the Oregon Public Utility Commission (the "Commission" or "OPUC") staff report (the "Staff Report") recommending that the Commission open an investigation into Public Utility Regulatory Policies Act ("PURPA") implementation and adopt interim avoided cost rates. The Staff Report makes three primary recommendations: 1) that the Commission open an investigation into PURPA implementation in Oregon; 2) that the Commission order interim action on avoided cost rates, which could include wholesale changes in the manner in which rates are calculated and/or a reduction in the size threshold for standard contract and rate eligibility to 100 kilowatts ("kW"); and 3) the Commission order interim action on interconnections, which is limited to the utilities providing interconnection status information.

The underlying premises of the Staff Report are consistent with the utilities' inaccurate worldview in which QFs are a problem in Oregon, rates are too high, and the Commission needs to take action to limit the utilities' shareholders from the competition that results from the existence of QFs. This is disappointing, especially given the well-attended special public meeting that included a diverse array of renewable energy generators demonstrating the value that they provide to the electric system, ratepayers, and the state of Oregon, as well as providing important insights to the Commission regarding their real-world experiences and difficulties they face when attempting to sell their power to utilities that will do everything they can to avoid their PURPA obligations.

While it is difficult to ascertain from short references in various orders and public meetings over the last couple years, the QF Industry Associations understand that the Commission is concerned about the "boom and bust" cycle of PURPA development, and would prefer to have a more modest and steady stream of development. Moreover, the Commission apparently wants to ensure that, if it gets it wrong, it wants to err on the side of no new development (like it has for PacifiCorp) as opposed to "too much" development (as some claim has happened with Portland General Electric Company ("PGE")). The interim avoided cost rate remedies identified in the Staff report do not do anything to ensure modest and steady development, but instead contribute to the boom and bust cycle by creating a complete "bust" in Oregon. They also fail to recognize that one of main reasons that PGE has about 550 MWs of contracted but un-built QFs (and only 47 MWs of constructed ones) is that the Commission has blindly allowed PacifiCorp to effectively enter into no new projects, which has increased QF development pressure in PGE territory, since PacifiCorp is effectively "closed for business."

The QF Industry Associations are eager to explore ways to improve Oregon's implementation of PURPA, but we strongly urge the Commission not to throw out many years' worth of work by adopting less than fully considered remedies to potentially non-existent problems. It then bears repeating the legislative findings in the preamble to Oregon's PURPA, and we respectfully ask that everyone (the Commissioners, Staff, stakeholder and, yes, even the utilities) carefully read them and ask themselves if the positions they are taking and decisions they are making truly is designed to holistically implement every aspect of these goals and policies:

> 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.[1]

[1] ORS 758.515.

1. PURPA Investigation

The QF Industry Associations support Staff's recommendation to hold workshops to determine the best path forward to clarify certain important matters related to implementation of PURPA in Oregon; however, it is not clear at this point that a full-blown multi-year investigation is necessary, as opposed to a rulemaking proceeding that would allow for more inclusive less costly public participation. The Staff Report recommends an aggressive and unique, yet overall reasonable, process for fleshing out the scope of the new PURPA investigation with workshops and a Staff Whitepaper. We look forward to participating to more specifically identify our issues in the future.

We would like to note that calling this investigation "PURPA 2.0" is a misnomer.[2] This is not merely an issue of semantics, but is essential to properly recognizing the regulatory framework in Oregon that has been built up over forty years. The Commission has had a number of major PURPA investigations and policy shifts, including in the early 1980s after the passage of the new law, a dismantling of PURPA in the late 1990s leading up to industry restructuring, a major revision in the mid-2000s in UM 1129, and, most recently, the still not yet completed PURPA investigation over the last several years in UM 1610. UM 1129 took about four years and included a number of seminal orders that form the bedrock of current PURPA policies. UM 1610 started in 2012 and included major orders in 2014 and 2016, with one issue still pending. In addition, there have been a number of critically important, but less sweeping, PURPA investigations and proceedings over the years.[3] These proceedings are extremely time-consuming and expensive for non-IOU stakeholders. The IOUs have ratepayer funded legal and regulatory departments that can engage in continuous PURPA wars, while the QF interests must fund their own efforts to help inform the Commission of the views contrary to those of the IOUs. Given the long-term commitment needed to develop a renewable energy facility, the IOUs have

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2 Staff Report at 12 ("OPUC PURPA 2.0").

3 Some of these the recent PURPA case (not including individual QF and utility complaints or rate filings (e.g., UM 1443, UM 1728, etc.) in which policies are often set) include: UM 1129 (general PURPA investigation; 2004-2008); AR 521 (small generator interconnection rules; 2007-2009); UM 1396 (investigation into resource sufficiency and renewable avoided cost rates; 2008-2012); UM 1401 (large generator interconnection rules; 2008-2010); UE 244 (Idaho Power stay of PURPA obligations; 2012); UE 244 (Idaho Power proposal to lower standard contract eligibility cap; 2012); UE 245 (PacifiCorp load pocket-over generation; 2012-2013); UM 1610 (general PURPA investigation, 2012-current); UM 1664 (PGE out of cycle update; 2013); UM 1725 (Idaho Power request for stay of its obligations to enter into PPAs and proposal to lower the standard contract size threshold and contract term; 2015-2016), UM 1734 (PacifiCorp proposal to lower the standard contract size threshold and contract term; 2015-2016), UM 1752 (PGE out of cycle update; 2015-2016); UM 1854 (PGE proposal to impose a permanent life time cap on any solar developer and lower the size threshold; 2017-19), AR 521 (PURPA rulemaking codifying then current policies; 2015-2018). The Commission's first major order in UM 1129 includes an excellent but brief summary of PURPA's history in Oregon is a good primer on PURPA policies prior to 2005. UM 1129, Order No. 05-584 at 6-10 (May 13, 2005).

an inherent interest in undermining stability and predictability in the Commission's PURPA policies.

The QF Industry Associations are the first to urge the Commission to make changes that limit the ability of the utilities to abuse their monopsony powers and creative efforts to kill their competition. We also want the Commission to take prompt action. That said, we strongly urge the Commission to take careful and deliberate action, and that any interim PURPA action "should be narrow, targeted, and proportionate."[4] Narrow means that is tightly focused on whatever the PUC believes the problem to be. Targeted means that the solution should be tailored to the specific problem identified. And proportionate means that the relief should be reflective of the specific problem and remedy—and no more than necessary.

The Commission should also be cautious of considering interim relief in a manner outside Oregon's Administrative Procedures Act. Careful deliberation is also warranted because the Commission is conducting this review in an extremely unusual manner: a public meeting process in which ex parte rules do not apply without an ability for stakeholders to obtain, review or vet evidence of alleged harm and great confusion as to even what problems the Commission is seeking to remedy. It is not clear what effort the Commission has put forth to include other usually excluded stakeholders or their concerns, as committed in the SB 978 report to the legislature.

2. An Immediate Avoided Cost Price Change Is Not Warranted

The QF Industry Associations are disappointed that we are once again having a conversation about changing the methodology to lower avoided cost rates and the size threshold for standard contracts and rates. The ink on the Commission order approving a multi-party settlement with PGE on this very issue is barely dry,[5] and yet the impetus for radically upending the PURPA regulatory environment appears to be coming from the Commission itself. As we and our members have consistently said over the years, and as the legislature memorialized in statute, a settled and uniform climate for qualified facilities is important. It took us far, far longer to reach the settlement with PGE than it is taking the Commission to toss it aside.

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[4] UM 1725, Order No. 15-199 at 7 (June 23, 2015). Idaho Power, *inter alia*, sought a complete stay of its PURPA obligations, or in the alternative interim relief lowering the contract term for wind and solar to 100 kW for wind and solar and to reduce the contract term from 20 to 2 years. Idaho Power also submitted an application and testimony with a significant amount of evidence in support of its (later provided to be inaccurate) claims of a large amount of new potential QF contracts, including the exact number of projects and their estimated rate impacts. The Commission rejected Idaho Power's proposed stay and specific request, but did adopt what it called "narrow, targeted, and proportionate" relief. For example, as Idaho Power did not allege any potential harm from wind (but requested a change in the size threshold and contract term for wind), the Commission's interim relief only applied to solar. *Id.* at 6-8.

[5] UM 1854, Order No. 19-016 (January 18, 2019). In less than one month after the Commission reaffirmed a size threshold of 10 MWs (and 3 MWs for solar) based on a settlement that Staff signed, Staff is now proposing lowering the size threshold to 100 kW.

There is no evidence in any legally recognizable record of any "harm" or justification for why right now in February 2019 the Commission needs to take up much less change rules and orders on prices or rate eligibility. In the past when the Commission adopted interim relief, it was based at least on actual testimony by utilities of unprecedented numbers of QFs seeking power purchase agreements. Over time, evidence has shown that these claims were classic examples the utilities' inaccurately crying wolf, but presumably there is at least some minimal information to support their claims. At this time, we have seen no such evidence.

The Staff Report cites Idaho Power's misrepresentations about its avoided cost rates. Idaho Power compared its rates to spot market price forecasts. Idaho Power conspicuously did not provide a comparison of its last gas plant, which is in service and fully baked into its rate base. An accurate comparison would be to the all-in costs of both QFs and utility owned generation. An accurate comparison shows that Idaho Power's ratepayers are better off when Idaho Power purchases power from QFs than builds generation itself. Attachment A to these comments include cost data for Idaho Power's resources based on the costs approved in its rate cases.

The Staff Report also claims that PGE's rates are too high, but Staff has not provided any analysis regarding:

- PGE's avoided cost prices (they have significantly declined over time);
- The number of realistic QF projects that might enter into contracts with PGE going forward (keeping in mind that PGE does everything within its power to refuse to contract with the QFs);
- The number of projects that will be able to be constructed at today's prices once they able to run through the gauntlet of PGE's contracting department (many projects die under the unrelenting pressure of PGE's aggressive contract enforcement and interconnection obstacles); or
- The effect on the QF market going forward from reduction of the size threshold for solar to 3 MWs.

We think staff could easily confirm that the combination of PGE's current rules and policies for solar has essentially ended the ability for off-system solar generators to sell their power to PGE. Staff needs to demonstrate on the record that there is qualitative or quantitative information of a "run on the bank" as PGE claims.

Staff also does not address the fact that avoided cost prices are already at historic *lows*, and projects are facing new hurdles completely unrelated to PGE and the Commission. For example, recent changes in land use regulations make development of new projects in PGE's service territory extremely difficult. Similarly, solar projects are running up against the gradual expiration of the solar investment tax credit. As the utilities are well aware, running the clock without any explicit action by the Commission may solve the "problem" of a successful PGE PURPA program.

The Staff Report ignores the plight of QFs facing low avoided cost rates and interconnection abuses in PacifiCorp's service territory, despite this issue being a focal point for QF articulated frustration with the Commission's regulatory policies. The conversation should be about how to *increase* PacifiCorp's rates and undo its weaponization of the interconnection process in order to allow more PURPA projects in the most resource rich parts of the state, rather than further reducing avoided cost rates for the three utilities.

PURPA is dead in PacifiCorp's territory, so what is the emergency? That is the reason why so many QFs are trying to sell to PGE. Developers, including small irrigation districts and local biomass projects are unable to invest their capital in the parts of the state in which the sun shines, the trees grow, the wind blows, the water flows, and the earth is heated.

The fact that PacifiCorp's killing of PURPA in its service territory is not seen as a problem by the Commission presents a clear message: the Commission is only concerned about PURPA when it allows QFs to develop, but not when the utilities can successfully avoid their responsibilities. In other words, a "uniform institutional climate" means "uniform death."

Before considering an ad hoc revision, the Commission should be mindful of its current process for adjusting avoided cost rates. The Commission's current policy allows the utilities to frequently update their avoided cost rates at specific times and for specific reasons. This includes annual updates on May 1 of every year, *plus* an additional update following the acknowledgement of the utility's Integrated Resource Plan ("IRP").[6] In UM 1610, the Commission adopted its current process of annual updates and an update after IRP or IRP update acknowledgment.[7] The May 1 updates should include four specific allowable changes, including:

> (1) Updated natural gas prices; (2) On- and off-peak forward-looking electricity market prices; (3) Changes to the status of the Production Tax Credit; and (4) Any other action or change in an *acknowledged* IRP update relevant to the calculation of avoided costs.[8]

In addition, out-of-cycle updates are allowed to reflect significant changes in circumstances, such as the acquisition of a major block of resources or the completion of a competitive bid.[9] The standard for meeting this "significant change" is "very high."[10] The Commission stated that it expected "the parties to use this option infrequently."[11]

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6 OAR 860-029-0040(4), 860-029-0080(7); *see also* UM 1610, Order No. 14-058 at 25-26 (Feb. 24, 2014).

7 OAR 860-029-0080(7); UM 1610, Order No. 14-058 at 25-26.

8 UM 1610, Order No. 14-058 at 25-26 (emphasis in original).

9 OAR 860-029-0080(8)

10 UM 1610, Order No. 14-058 at 25-26.

11 *Id.*

That said, if PGE's rates are truly so high as to be causing harm, one would expect PGE could presumably make such a showing. PGE is in the final process of completing its request for proposal process, after which PGE has the right to file for new avoided cost rates and make such a showing. This filing could propose a change to the resource sufficiency-deficiency demarcation, which would likely have a significant impact on avoided cost rates. The Commission most recently allowed a utility to obtain an out-of-cycle update when Idaho Power changed its resource sufficiency date or need based on the acquisition of 400 MW of capacity.[12] After being provided an opportunity to review the underlying information, the Renewable Energy Coalition ultimately supported the out-of-cycle update.

The utilities may also have the ability to seek and obtain avoided cost rate changes more quickly with an acknowledged update to their IRP. PGE actually did this recently, without any opposition by QFs. PGE filed a motion for Commission acknowledgement of its IRP update on March 8, 2018, and the update was acknowledged in less than two months on May 1, 2018.[13] One of the primary reasons that PGE requested early acknowledgement of its IRP was that it wanted to update its avoided cost rates.[14] The QF industry had advance notice that PGE was planning on making the filing, and it resulted in an orderly and well understood process that allowed PGE to update its rates using cost inputs and assumptions that were approved without controversy. This was less than nine months ago.

Staff did not analyze whether either of these established processes and recent experiences addressed PGE's "problem" of having a viable PURPA program. Instead, Staff has proposed to change years of carefully established process and to use an enhanced avoided cost rate update process, which would use recent, publicly available data in the current avoided cost model.

- Capital costs of the avoided resources (SCCT, CCCT, and wind)
- Fixed operations and maintenance (O&M) costs
- Capacity factors for the avoided wind resources
- Updated current forward electricity and natural gas prices (this element is included in May 1 update)"[15]

Staff has also proposed to not allow changes to the status of the Production Tax Credit ("PTC"), which is one of the allowed May 1 update items. The PTC is a federal law that has expired. This may be because incorporating any changes in PTCs would likely *increase* avoided cost rates, and the purpose of this process appears to be to lower rates. Staff also did not propose adopting any of the proposals raised by the QF and renewable energy industry, including using the resource value of solar, paying for capacity during the sufficiency period, allowing levelized rates, etc.

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12 UM 1725, Order No. 16-129 at 8 (March 29, 2016).
13 *In re PGE 2016 IRP*, LC 66, Order No. 18-145 (May 1, 2018).
14 LC 66, PGE Motion for Commission Acknowledgement at 1-2 (March 8, 2018).
15 Staff Report at 6.

A major concern of the QF Industry Associations is that the *current* process in which the Commission relies upon avoided cost rate inputs and assumptions from the IRP allows the utilities to essentially set the avoided cost rates without review, because the Commission simply ignores and refuses to address issues raised by QFs during the IRP process. Staff's proposal just makes matters worse. Even the limited and cursory protections and rights in the IRP process would be abandoned in favor of simply adopting whatever data the utilities are considering using in their IRPs.

Stakeholders have had only a few days to review this abrupt change in policy, and the Commission is to consider the changes at the public meeting this week. In contrast, when the Commission adopted its current process of annual updates in UM 1610, it did so after receiving extensive evidence from numerous parties and allowing multiple rounds of legal briefing over a couple years. This fact alone warrants not making any changes to lower the rates at this time.

3. There Is No Basis to Lower the Eligibility Cap

Under no circumstance should the Commission lower the rate eligibility cap to 100 kW. All supporters of renewable energy will cast this as overtly hostile and a direct attack on renewable energy in Oregon. Lowering the eligibility cap is equivalent to repealing the must-buy requirement during the investigation—obtaining a negotiated rate is not feasible for small QFs under the size of the current eligibility cap. Once lowered, the utilities will do whatever they can to maintain the reduced cap for as long as possible; it will kill the industry, in direct contradiction to legislative policy directives.

The QF Industry Associations find it hard to believe that they are addressing this issue once again. The current 10 MW size threshold was adopted in UM 1129 and reaffirmed in UE 244 and UM 1610. Then the size was lowered to 3 MWs for solar in UM 1725, UM 1734, and UM 1854. Again, these cases took years and had extensive opportunity for all interested parties to review the basis and impact of such a dramatic change. The evidence PacifiCorp and Idaho Power presented has, over time, proved to be false, but Staff will not examine this. The fact that the Commission *sua sponte* is even considering lowering the size threshold is one of the most distressing and concerning PURPA developments in recent memory. In the PURPA world, this option is considered the "nuclear" option, and it is simply not responsible to threaten or consider such a dramatic change in this manner. It is as if the Commission is making a concerted effort to create an unsettled institutional climate for Oregon QFs.

4. Better Understanding of Interconnection Issues

The QF Industry Associations agree that a much higher level of transparency is necessary in the regulatory process related to QF interconnections. A number of QF commenters identified interconnection issues as the prime obstacles and, as aptly stated by the small Oregon developer Conifer Energy Partners, "Utilities appear to have become resolved to using the interconnection process as a last-ditch effort to prevent projects from getting built." PacifiCorp is using interconnection and transmission restrictions to impose exorbitant and unnecessary costs on small and large QFs alike. PGE is facing a number of interconnection complaints, because it has

not adhered to the standard interconnection study and processing timelines for many projects, provided inaccurate information and cost estimates, over charged customers, used interconnection delays to take advantage of customers, and refused to allow interconnection customers to hire their own third-party contractors.

Staff has requested that the utilities begin making the following information available to any QF application:

• Feeder data;
• Feeder nameplate capacity; feeder age; the capacity of currently interconnected distributed energy resources at the feeder; previously conducted studies at the feeder;
• Substation data;
• Substation nameplate capacity; substation age; the capacity of currently interconnected distributed energy resources associated with the feeder; previously conducted studies at that feeder;
• OASIS information; and
• Summary of studies available on OASIS for projects of a similar size and in the same geographic location.

This is all reasonable information. The QF Industry Associations, however, recommend that additional information be provided. First, instead of providing a summary of the studies available on OASIS for projects of a similar size and the same geographic location, the utilities should simply make available copies of all studies (with the project queue positions) for all locations. This would provide additional information that could assist developers when determining the best locations to site their facilities. The feeder and substation data should also be clarified so that the developer knows what the load is and what the current and future (with higher queued projects) equipment configuration is. Secondly, developers should know what the current interconnection standards are *and* how they are implemented - not just a statement staying it is IEEE 1547 2003 edition. All standards should be posted on OASIS. Third, the utilities should be required to comply with ORS 672.020, 672.005, and 672.007 by providing engineering endorsements on final interconnection studies and interconnection agreements.

PacifiCorp should also be required to divulge information about their load pockets, and they should be required to show their calculations.

Finally, the Commission should investigate PacifiCorp's and PGE's requirement that QFs to take the more comprehensive Network Resource Interconnection Service and then using it as justification to saddle QFs with hundreds of millions of dollars of illegitimate network upgrades – without providing refunds for such network upgrades as required by the Federal Energy Regulatory Commission ("FERC").[16] The utilities must provide sufficient technical justification for all network upgrades in the form of a contingency analysis that demonstrates the degree to which the QF interconnection overloads the facility in question, as well as provide information related to the assumptions the utilities use in determining the materiality of any particular

[16] FERC, Order 2003, para. 696 (July 24, 2003)

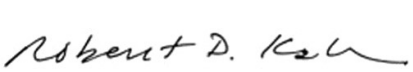
overload. The Commission should further undertake an investigation as to whether Oregon's interconnect policies, including the cost responsibility for network upgrades, are in line with those of FERC's.

5. Conclusion

The QF Industry Associations advocate on behalf of renewable energy companies, counties, irrigation districts, waste management districts, cooperatives, and cities committed to renewable energy development in Oregon and legacy energy projects and small companies that have been a part of Oregon's renewable energy picture for decades. We think we get recognition and respect for who we are, what we have done and what we are trying to throughout the state and at the state capital. We are determined to speak candidly, directly and honestly to our experiences, our circumstances, our efforts and our goals. We have heard no rebuttal or criticism to our comments at last month's meeting. Yes, to a small extent (imagined to be much larger), we compete with the large utility monopolies, and are vilified for that.

In the end, the Commission to not adopt any interim measures lowering avoided cost rates. Instead, it should focus on increasing PacifiCorp's artificially low rates, adopt interim measures providing QFs with additional information on interconnections, and investigate claims regarding the utilities' use of the interconnection process. The Commission should decline from making hasty and ham-fisted decisions that could shut down Oregon's energy market to QFs (instead of just shutting down the ability to sell to PacifiCorp).

Sincerely


Brian Skeahan Robert Kahn John Lowe

Attachment A

To CREA, NIPPC and REC PURPA Comments

IDAHO POWER COMPANY
COMPARISON KWH COST

RATE-BASED COMPANY OWNED RESOURCES
VS.
PURPA RESOURCES

RESOURCE	DATE ACQUIRED	REFERENCE[1]	COST [2] CENTS/KWH
Cascade Hydro Rebuild	1984	Order No. 20610	9.0 cents kWh
North Valmy Coal Plant	1985	Order No. 20610	6.25 cents kWh
Milner Dam Rebuild	1992	Order No. 23529	6.27 cents kWh
Swan Falls Hydro Rebuild	1994	Order No. 23520	7.3 cents kWh
Mt. Home Gas Danskin	2002	Order No. 28773	7.7 cents kWh
Mobil Generators Diesel	2002	Order No. 28773	12.4 cents kWh
Mt Home Gas Evander Andrews	2001	Order No. 30201	6.1 cents kWh
Mt Home Gas Bennett Mt.	2005	Order No. 29410	7.8 cents kWh
Langley Gulch Gas	2011	Order No. 20892	11.1 cents kWh
Elkhorn Wind	2006	Order No. 30259	6.2 cents kWh
Neal Hot Springs Geothermal	2009	Order No. 31087	11.7 cents kWh

PURPA RESOURCES ACQUIRED SINCE 1978

109 Projects with a total capacity of 738 MW. Produced a grand total of 28,849,973,165 kWh at a total blended cost of 6.07 cents per kWh.[3]

[1] IPUC Order Number
[2] Levelized Rate Used by IPUC for Prudence Determination
[3] Source, IPCo Annual PURPA Reports on file at IPUC.