

SBUA in Oregon:

SBUA has intervened in the Oregon Public Utilities Commission docket 1610, a generic proceeding regarding avoided cost rates paid to qualifying facilities, that is, certain independent energy producers defined under the Public Utility Regulatory Policies Act of 1978 (“PURPA”), in Oregon. The goal of the docket is to ensure that the PURPA policies continue to promote qualifying facilities (“QF”) development while ensuring that utilities pay no more than “avoided costs”. “Avoided costs” is basically the replacement power that a utility would produce or purchase if the QF did not provide the power.

The docket is divided into two parts and the Commission Order resolving Part 1 was issued February. This briefing summarizes the Order including decisions set forth in this Order and decisions identified for resolution in Part 2. Basically, in this Phase 1 proceeding, the OPUC decided to retain current methodology for avoided cost prices with some modification for wind integration and capacity contributions.

There are two rate-making methodologies at issue: (1) the rates for Standard Contracts, that is contracts for independent power nameplate capacity of 10 MW or less, and (2) Non-standard Contracts which are PURPA contracts over the 10MW threshold. Non-standard Contracts require negotiation whereas Standard Contracts are vetted in an open OPUC process and approved by the Commission. Oregon is unique in that it has retained a 10 MW threshold for its Standard Contracts as compared with other states including others in the Pacific Northwest, such as Idaho which has dropped its Standard Contract eligibility thresholds to 100 kW.. Non-standard QF rates are negotiated between buyer and seller, but use the standard avoided cost rates as a starting point.

SBUA advocating small business interests in the docket:

Assisted by Cleantech Law Partners PC, a certified B-Corp, SBUA weighed in particularly on the issues of the threshold level of 10 MW and also on methodology of calculating avoided costs. With limited resources in a large docket, SBUA decided to focus on its efforts on supporting consistent policy for Oregon's businesses and maintaining transparency and accuracy in methodology. Oregon small businesses took a hit from the elimination of the business energy tax credit and other regulations in the energy industry generally which the state has identified as a target industry for economic development. Oregon's methodology consists of transparent spreadsheet entries of data by which potential developers of any size might forecast rates that they would sell power to a utility were they to develop a renewable energy project from start to finish. SBUA relied on State of Oregon data regarding small business operations in an economy which emphasizes the energy industry impacting small businesses across the state, expertise of the Distributed Wind Energy Association which provided real world experience based input for the Commission regarding the impact of the decisions on smaller wind developers, and outside sources which demonstrate the multiplier effect of PURPA projects in communities where they are sited.

Part 1 Resolution:

The Commission retained the 10 MW eligibility cap. The resolution relied on the previous OPUC PURPA Order 05-584 rationale that challenges smaller QFs face in

entering the market incurred in negotiating an agreement and other market barriers such as an asymmetric information and un-level playing field can render certain QF projects uneconomic and deter QF development in Oregon. Small QFs may lack the resources to negotiate complex modeling and inputs with a utility, and the utilities are protected from overpaying through the process adopted in the proceeding of maintaining accurate rates via annual updates.

The OPUC also determined that all three utilities (Portland General Electric, Pacific Power (a subsidiary of PacifiCorp, and Idaho Power Company) will be subject to the same standard contract methodology. Calculation of each utility's standard avoided costs begins with the utility filing an Integrated Resource Plan for a 20-year planning horizon, as required every two years. The Commission referred to a previous docket reminding parties that "Utilities' avoided cost methodologies were designed to capture the avoided costs actually realized by the utility when it buys power from a QF, and are intended to be simple and clear, with inputs and assumptions taken from IRPs that are subject to stakeholder review." The Commission retained the same Standard methodology and the Renewable Method to calculate renewable avoided cost prices in which rates are set periodically and on a proxy basis.

While the Commission essentially retained the same methodology it revised it somewhat by adjusting the avoided cost prices for integration and resource capacity. Given acquired data in the form of wind integration studies on the cost of integrating wind energy resources into the electric system, the Commission directed that for a wind QF located inside a utility's BAA the integration costs that the wind facility imposes on the utility would be subtracted from the Standard Method avoided cost rate the QF would receive. For a wind QF located outside the BAA no adjustment would be made, and for non-wind QFs no adjustments would be made due to the lack of study demonstrating integration costs, though the Commission contemplating revisiting this point. For the Standard Renewable Method if both the proxy wind plant and the QF are in the same BA no price adjustment for wind integration, though if the proxy wind facility was outside the BA in a FERC approved integration charges the QF price would include the net difference, and if the QF was outside the BA then no adjustments would be made and the utility could recover the FERC transmission tariff.

The Order also directs utility's to adjust avoided cost prices according to the capacity of a given resource (e.g. wind, solar, base load, etc.). The capacity contribution for each renewable QF resource type would be the capacity contribution assumed for that resource type in the utility's acknowledged IRP.

The docket issues included who pays for third-party transmission. The OPUC resolved the matter by first describing its understanding of the context. Pacific Power has areas within its non-contiguous service territory in Oregon that are reliant, either partially or entirely, on third-party transmission as "load pockets".

To import to, or export from, these load pockets, third-party transmission must be used. While PURPA requires the PURPA obligation of a utility to buy a QF's output where it is

received, and to physically deliver it to load, the OPUC noted an open issue as to how a state Commission accounts for these transmission costs in relation to avoided costs. The OPUC determined that when a QF located within a utility's "balancing area" ("BAA") imposed integration costs on the utility, the avoided cost rates paid to the QF should be adjusted for those costs depending on the particular circumstances of the QF. How to calculate and assign the third-party transmission costs are attributable to the QF is left to Phase 2. Some examples of such resolution may include: lowering standard avoided cost rates, separately in interconnection cost assessments, through an addendum, or by some other means. SBUA will have an opportunity to weigh in on this issue in Phase 2.

In response to concern expressed by utilities regarding potential overpayment of QFs where inputs would change affecting the cost to obtain replacement power, the Commission altered existing PURPA regulation by requiring annual updates to avoided costs. The OPUC adopted a new requirement for an annual update on a specific day each year, in addition to the current complete avoided cost update following each IRP acknowledgement order. Electric utilities are directed to update their avoided cost rates 30 days after IRP acknowledgement and on May 1 every year, presenting such updates at a public meeting. The May 1 updates will be based on four factors: updated natural gas prices, on- and off- peak forward-looking electricity market prices, changes to the status of the Production Tax Credit (a major driver of renewable energy project development), and any other action or change in an acknowledged IRP update relevant to the calculation of avoided costs.

In response to problems experienced in Oregon by large energy projects breaking into smaller ones and gaming the system to obtain a high price for power, the OPUC refined the definition of "single QF" eligibility. A single QF must be owned by the same person(s) or affiliated person(s) and that multiple sites must be located within a 5-mile radius, with an exemption for passive investors. The Order limits eligible passive investors to independent, family-owned or community-owned projects.

The Commission adopted specific provisions regarding the Mechanical Availability Guarantee (MAG), or the amount of time wind energy project must be operating in a year. OPUC adopted a 90 percent overall guarantee for wind QF contracts, starting in contract year three for new contracts, and starting in year one for contracts that are renewed or supersede a contract with another utility. OPUC allows 200 hours of planned maintenance per turbine per year that would not count towards calculation of the overall guarantee. The Commission decided that the penalty for failure to meet the MAG penalty should be based on costs of replacement power for the shortfall in output from the QF. In Phase 2 parties will develop a methodology for calculating such net replacement power costs, and whether and under what circumstances should contract termination occur for persistent failure to meet the MAG.

The OPUC decided against leveling rates to pay QF s the same amount monthly for power produced. The Commission reasoned that leveling results in the QF project receiving energy rates in the early years of a QF contract that are higher than the actual avoided costs of energy therefore not consistent with the statute.

Part 2 of the proceedings will address how to calculate the third-party transmission costs attributable to a QF, negotiation of non-standard QF rates, and issues common to QF contracts and interconnection. SBUA will work with DWEA and other SBUA members to contribute our perspective and expertise to this work and assist the OPUC in preserving the viability of independent smaller power generation in Oregon and the impact such projects have on our small business-based economy.