PURPA in Oregon

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Influence of Oregon Legislature

- **Oregon Revised Statute § 758.515 Legislative Findings**

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. [1983 c.799 §2]

- Legislative findings and goals do not impose substantive requirements on Oregon Public Utility Commission (OPUC), but Commission often considers the goals stated in ORS § 758.515 when implementing PURPA, which places an emphasis on QF development that may not

Eligibility for Standard Contract and Standard Rates in Oregon

- ❖ With one exception, all QFs 10 MW and below are eligible for standard contract terms and standard prices. Solar QFs 10 MW and under are eligible for standard contract terms but may be no larger than 3 MW to receive standard avoided cost rates.

- ❖ OPUC's determination of eligibility balances risk to ratepayers associated with standard avoided cost rates against need to eliminate barriers to development by small QFs.
  - ➡ Standard contract rates arguably pose more risk than non-standard rates because standard rates are based on application of seven factors (18 C.F.R. 292.304) to proxy resource and non-standard rates are based on application of seven factors to contracting QF.
  - ➡ Small QFs arguably do not have sufficient resources to negotiate PURPA PPA.

Standard and Non-Standard Avoided Cost Rates

- ❖ QFs that are a resource type eligible for Oregon's Renewable Portfolio Standard (RPS) may select either "standard renewable avoided cost rates" or "standard non-renewable avoided cost rates.
  - ✦ Non-renewable avoided cost prices based on costs of avoided single cycle combustion turbine.
  - ✦Renewable avoided cost prices based on avoided costs of purchasing utility's next planned acquisition of an RPS-compliant resource.
- ❖ "Renewable" QFs must transfer RECs to purchasing utility when receiving deficiency period prices.
- ❖Fixed-price term of contract divided into sufficiency-period pricing and deficiency-period pricing.
  - ➡ Sufficiency period prices based on utility's most current forecasted forward market price curve at time rates are set.
  - ➡Deficiency period prices include payment for capacity based on avoided cost of proxy resource (SCCT for "non-renewable" standard cost rates and next planned RPS-compliant resource for "renewable" QFs).

Standard Contract Length

- ❖15 years of fixed prices followed by 5 years of market prices. Contract term is intended to balance QF need for certain income stream vs. risk that costs in standard contract will be significantly higher than actual avoided costs in out years of contract.
  - ➡Utilities advocate for contracts no longer than 5 year, arguing these are comparable to what is available in market.
  - ➡QFs believe fixed-price term of 25-30 years is appropriate because this comparable to a utility's rate recovery of new resource.
- ❖ Fixed-price term starts at actual commercial operation date.
  - ➡ OPUC has also allowed fixed price term to start at contract execution, but decided in 2017 that fixed price term must start at COD. *NIPPC v. PGE*, OPUC Order No. 17-256.
  - ➡OPUC currently examining whether fixed-price term should start at scheduled commercial operation date rather than actual commercial operation date.

Standard Contracting Process

- Process starts when developer asks for draft PPA and complies with certain information requirements that vary somewhat between utilities. Developers must show some evidence of site control or that site control will be had.

- *Portland General Electric and Idaho Power Company:* Once QF has submitted request for PPA and satisfied information requirements, QF has 15 business days to provide draft PPA. If QF proposes changes to PPA, utility has 15 business days to provide revised PPA. This process continues until QF notifies utility the terms are okay and wants executable PPA. Utility has 15 days to provide executable PPA. Once QF executes PPA, QF has a LEO.

- *PacifiCorp:* PacifiCorp will provide QF with draft PPA upon request and when information requirements are satisfied. PacifiCorp will not provide an executable PPA until after QF has an interconnection study supporting interconnection within three years.

- All QFs have unilateral right to select a scheduled COD anytime within three years of contract execution and may select a later scheduled COD with consent of the utility.

PacifiCorp information requirements for draft PPA

(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; and

(k) point of delivery or interconnection.

Eligibility for Legally Enforceable Obligation (LEO).

- One utility has interpreted its Commission-approved tariff to allow utility to require system interconnection study supporting scheduled commercial operation date as criteria of eligibility for LEO.
- OPUC is considering whether to require all utilities to impose this IX study criteria for LEO eligibility or to prohibit it.
  - QFs argue the requirement for a study is inconsistent with FERC precedent and Order No. 872.
  - Utilities argue that requirement for an IX study is needed to prevent speculative contracts because otherwise, QFs will execute PPA without knowing whether it can interconnect with utility and come on-line by scheduled COD.

Misc. Standard Contract Terms

- If a QF fails to meet scheduled COD, utility may issue Notice of Default. Utility has one year to cure default. During cure period, QF owes damages equal to difference between replacement power and prices in standard contract when replacement power costs are higher. Utility may terminate after cure period.
- Non-intermittent QFs have minimum delivery requirements and intermittent QFs have mechanical availability requirements. QFs can owe replacement damages for failure to meet these guarantees. Failure to meet requirements two years in a row may result in Notice of Default and termination.
- Standard contracts do not include provision allowing QF to unilaterally terminate contract.

Thorniest Issues

- **Interconnection.** One utility in Oregon has little transmission capacity and another has quickly diminishing capacity. Costs to interconnect are increasing and a barrier to entry. OPUC is considering whether to change how costs for interconnection-related Network Upgrades are allocated. Currently, QFs allocated all costs of Network Upgrades and not entitled to reimbursement.
- **Speculative contracting.** Developers will request multiple standard contracts prior to conducting significant due diligence in order to secure avoided cost prices before utility updates prices. Many QFs ultimately ask to withdraw from contract or enter into default when fail to meet scheduled COD. QFs that fail to meet scheduled COD complain to Commission that QF missed the scheduled COD because the utility delayed the IX process.