

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 AR 660

4 In the Matter of)
5 Adoption of Rules Relating to) STAFF'S COMMENTS ON
6 Resource Adequacy.) RULES PENALTY
_____)

7
8 **Introduction**

9 On September 21, 2023, the Oregon Public Utility Commission (Commission) approved
10 Staff's request to open a formal rulemaking on resource adequacy and issue a notice of proposed
11 rulemaking.¹ Notice of a proposed rulemaking was published in the Oregon Bulletin for
12 December 2023, with a comment deadline of January 25, 2024.²

13 Commission Staff submit these comments respectfully recommending a modification to
14 proposed rule OAR 860-095-0040(11), State Program Requirements, to conform with the
15 statutory language setting forth the Commission's authority to impose penalties under O.R.S. §
16 756.990.

17 **Penalties versus Fines**

18 Proposed OAR 860-095-0040 describes the State Program Requirements.³ The intent of
19 proposed OAR 860-095-0040(11) is to provide the *penalty* for noncompliance under the State
20 Program pursuant to the Commission's authority set forth in O.R.S. § 756.990. The proposed
21 language states:

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23 _____
24 ¹ *In the Matter of the Public Utility Commission of Oregon, Investigation into Resource
Adequacy in Oregon (UM 2143), and Adoption of Rules Relating to Resource Adequacy (AR
660), Docket No. 660, Order 23-340 (September 22, 2023).*

25 ² Resource Adequacy Rulemaking, Chapter 860 Public Utility Commission, Notice of Proposed
26 Rulemaking, Oregon Bar Bulletin for December 2023 (filed November 27, 2023).

³ *Id.* at 9.

1 (11) A State Participant whose plan is not approved 60 days after the Commission
2 identified deficiencies shall be subject to a *fine*, revocation of Electric Service
3 Supplier certification, or some other appropriate penalty determined by the
4 Commission.

5 (a) The Commission shall assess *fines* on a per-MW basis for monthly
6 capacity or transmission deficiencies and based on the *fining*
7 methodology of a Qualified Regional Program.

8 (b) Revocation of Electric Service Supplier certification shall only be considered
9 after twice failing to cure a deficiency and following an investigation by the
10 Commission.⁴

11 This proposed language uses the term *fine* to describe a potential penalty the Commission may
12 levy against a State Program participant for noncompliance. However, a fine is generally
13 associated with criminal penalties.⁵ More importantly, the use of the term fine could lead to
14 confusion regarding agency fees, which requires legislative approval.⁶ The proposed resource
15 adequacy rules should reflect the language of O.R.S. § 756.990, which grants the Commission
16 the authority to impose *penalties*.

17 **Proposed Modification to Address Ambiguity**

18 A simple language modification to proposed OAR 860-095-0040 could eliminate any
19 ambiguity while retaining the original intent for the Commission to impose penalties for
20 noncompliance with resources adequacy rules. Staff suggests that OAR 860-095-0040(11) be
21 modified to read as follows:

22 (11) A State Participant whose plan is not approved 60 days after the Commission
23 identified deficiencies shall be subject to **an appropriate penalty as determined by the
24 Commission a fine, including** revocation of Electric Service Supplier certification **or
25 some other appropriate penalty determined by the Commission.**

26 (a) The Commission shall assess **fines penalties** on a per-MW basis for monthly
capacity or transmission deficiencies and based on the **fining** methodology of a
Qualified Regional Program.

27 ⁴ *Id.* (emphasis added).

28 ⁵ See O.R.S. § 161.625.

29 ⁶ See O.R.S. § 291.055.

1 (b) Revocation of Electric Service Supplier certification shall only be considered
2 after twice failing to cure a deficiency and following an investigation by the
Commission.

3 **Conclusion**

4 For the forgoing reasons, Staff respectfully recommends that the Commission adopt the
5 modification set forth above or a different modification that would address the language issue
6 regarding penalties for noncompliance.

7 Staff may file additional comments on other aspects of the proposed resource adequacy
8 rules before the comment deadline of January 25th, 2024.

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10 DATED this 10th day of January 2024.

11 Respectfully submitted,

12 ELLEN F. ROSENBLUM
13 Attorney General

14 */s/ Betsy Bridge*

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