

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

3 UM 2011

4
5 In the Matter of
6 PUBLIC UTILITY COMMISSION OF
7 OREGON,
8 General Investigation Capacity.

STAFF RESPONSE TO ADMINISTRATIVE
LAW JUDGE MEMORANDUM

9
10 Below are the responses of the Staff of the Oregon Public Utility Commission to the three
11 questions posed in the Administrative Law Judge (ALJ)'s January 15, 2021 Memorandum
12 regarding the issues and process for Docket No. UM 2011. In summary, Staff concludes that a
13 rulemaking proceeding is the appropriate venue to adopt a generally applicable Capacity
14 Valuation Methodology that can be used to value capacity. However, Staff will rely on the
15 informal investigation and process in this docket, No. UM 2011, to finalize a draft of proposed
16 rules setting forth a Capacity Valuation Methodology. Accordingly, Staff recommends that the
17 ALJ establish a procedural schedule in Docket No. UM 2011 to allow opportunity for additional
18 for stakeholder input, both written and in workshops, on Staff's Capacity Valuation
19 Methodology proposal previously circulated on January 14, 2021. At the conclusion of this
20 informal process, Staff will submit a Public Meeting Memorandum to the Commission
21 recommending that it close Docket No. UM 2011, open a rulemaking docket, and begin the
22 rulemaking process prescribed under ORS ch. 183.

23 *ALJ Inquiry 1 re: Scope: The issues presented for resolution in the next phase of this*
24 *proceeding and any issues identified but not proposed for resolution in this phase.*

25 **Issues presented in this docket:**

- 26 1. What methodology or methodological baseline should the Commission use to determine the capacity contribution of a resource?

- 1 a. Is the Effective Load Carrying Capability (ELCC) methodology described by E3
2 an appropriate general methodology to determine the capacity contribution of a
3 resource?
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5 b. Should ELCC values vary year-to-year for future years based on future load and
6 resources?
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8 c. How frequently should ELCC values be updated?
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10 d. Should vintage values ELCC values be locked-in?
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12 e. If the ELCC methodology is appropriate for determining the capacity contribution
13 of a resource, should the Commission measure the “Last-in,” “First-in,” or
14 “Portfolio” ELCC?
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16 f. Should the Commission authorize utilities and parties to use heuristic methods to
17 approximate ELCC? If so, when and how?
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19 g. Should all utilities in Oregon be required to use the same model to determine
20 capacity contribution?
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22 h. Should a utility be required to use the same model when determining the capacity
23 contribution of all resources or should the model vary by resource type?
24
25 2. What methodology or methodological baseline should the Commission use to determine
26 the value of capacity provided by a resource?
a. Should the Commission adopt a valuation methodology that considers the
utilities’ need for capacity, i.e., distinguishes between periods during which the
utility needs to acquire capacity and periods when it does not?
b. How should the Commission determine whether and when the utility needs
capacity, i.e., distinguish between periods of resource sufficiency and deficiency?
c. How should the Commission determine the value of capacity during a utility’s
deficiency period?
d. How should the Commission determine the value of capacity during the
sufficiency period?
e. If the value of capacity is dependent on the utility’s avoided costs, how should the
Commission determine avoided costs, i.e., which proxy resource acquisition
should the Commission use.
f. Should there be a ramp between the value of capacity during sufficiency periods
and deficiency periods, i.e., should the value of capacity escalate in the final
portion of the sufficiency period prior to the transition to deficiency period
pricing.

1 g. How granular should the valuation be? Should the Commission determine
2 capacity values by peak-period and non-peak period, or should the Commission
be more granular and develop a methodology that values capacity for every hour
in a year? Do the values change from year-to-year?

3 h. Should adder values for ancillary services or resiliency be calculated in this
4 docket?

5 **Issues identified in E3 Report and Staff Comments but not presented in this docket.**

6 1. What is the appropriate compensation framework to use to compensate a resource
for capacity?

7 a. All sub-issues related to this topic, i.e., “pay-as-you go” or “fixed annual
8 payment”; contract length; performance guarantees; hours over which
payments are spread, etc.

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10 *ALJ Inquiry 2 re: Process: Proposed process for the remainder of the next phase of the*
11 *proceeding, including the procedural milestones that would be included under the*
requested process. Please plan to address whether there are any specific issues
warranting a particular process, and why.

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13 **Staff Proposed Process.** Staff continues to recommend that this docket remain a non-contested
14 case, but no longer proposes to conclude this docket by asking the Commission to adopt a
15 methodology to value capacity at a public meeting. Instead, Staff asks the ALJ to allow Docket
16 No. UM 2011 to proceed informally to allow Staff and stakeholders to work collaboratively on a
17 Capacity Valuation Methodology and draft rules “codifying” the methodology. After additional
18 opportunity for stakeholders to provide input, both in writing and orally at a stakeholder
19 workshop(s), in this docket, Staff will develop its final draft of proposed rules and present them
20 to the Commission in a Public Meeting Memorandum. The Public Meeting Memorandum will
21 include Staff’s recommendation to close Docket No. UM 2011, open a rulemaking hearing, and
22 Staff’s proposed draft rules informed by the informal process in Docket No. UM 2011.

23 At the Public Meeting regarding these recommendations the Commission can address
24 Staff’s request to close Docket No. UM 2011 and open a rulemaking and decide at that time
25 whether to take the additional step of initiating the rulemaking process required under ORS
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1 183.325, et seq., or whether to order Staff to continue to work with parties informally to revise
2 the draft rules.

3 Staff's proposal to continue this informal process to allow collaboration on a draft
4 proposal, and ultimately conclude it with a request to initiate a rulemaking, is based on several
5 considerations.

6 First, after further consideration of the objectives of this investigation into a Capacity
7 Valuation Methodology, Staff believes a rulemaking is the appropriate process. A general
8 Capacity Valuation Methodology that would apply in different dockets for different purposes fits
9 squarely within the statutory definition of a rule. Under ORS 183.310(9), a "rule" "means any
10 agency directive, standard, regulation or statement of general applicability that implements,
11 interprets or prescribes law or policy, or describes the procedure or practice requirements of any
12 agency."

13 In contrast, an agency order, including an order in a contested case, "means any agency
14 action expressed orally or in writing directed to a named person or named persons, other than
15 employees, officers or members of an agency." (ORS 183.310(6)(a)). The Commission's action
16 of adopting a General Capacity Valuation to use in future proceedings does not fit within the
17 definition of an order.

18 Staff believes its proposal to continue Docket No. UM 2011 as a non-contested case until
19 Staff has finalized its proposed Capacity Valuation Mechanism rules and to then close UM 2011
20 and ask the Commission to open a rulemaking proceeding to adopt the Capacity Valuation
21 Methodology as administrative rules is consistent with the process previously discussed by Staff,
22 but with the addition of a rulemaking process to protect stakeholders' interests. Notably, a
23 rulemaking process does not require formal intervention or appearance through counsel, so such
24 a process addresses concerns of stakeholders who believe the requirements of a contested case
25 process are cost prohibitive.

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1 **Staff proposes the following procedural schedule for the remainder of UM 2011:**

2	January 25, 2021	Prehearing Conference
3	February 12, 2021	Stakeholder comments re: E3 Report/Staff Comments
4	Week of February 22, 2021	Workshop
5	March 12, 2021	All-party reply comments
6	April 9, 2021	Staff circulates draft rules to parties
7	April 30, 2021	Stakeholder comments on draft rules
8	Week of May 10, 2021	Workshop re: Staff proposed rules
9	May 18, 2021	Stakeholder reply comments re: Staff proposed rules
10	June 15, 2021	Staff submits draft rules to Commission and recommends Commission open a rulemaking proceeding and give notice of rulemaking proceeding to initiate rulemaking process required under ORS 183.325, <i>et seq.</i>

13 3. *Outcomes: The intended result of the next phase of this proceeding and any subsequent*
14 *actions, including any subsequent process, and where and how the results of the next*
15 *phase of this proceeding might be applied.*

16 As discussed above, Staff intends that Docket No. UM 2011 result in Staff-proposed draft
17 rules setting forth a Capacity Valuation Methodology for use in a variety of applications in
18 OPUC proceedings. The actual application of the Capacity Valuation Methodology rules to any
19 specific circumstances would happen in future OPUC proceedings.

20 After Staff has finalized its draft of proposed rules (after the informal process in this
21 docket), Staff proposes to draft a public meeting memorandum recommending that the
22 Commission (1) close Docket No. UM 2011, (2) open a rulemaking docket, and (3) give notice
23 of its proposed adoption of Staff's draft rules in accordance with ORS 183.355. The
24 Commission could rule on the recommendations separately and could choose to have additional
25 informal process, either in UM 2011 or a new rulemaking docket, before giving notice of its
26 intent to adopt the proposed rules.

1 After the Commission has opened a rulemaking docket and given notice of adoption of
2 proposed rules, the Commission would proceed with a rulemaking process. This process would
3 include opportunity for written and oral comment by stakeholders. Notably, it is not necessary to
4 intervene in a rulemaking to provide comment. At the conclusion of the rulemaking process, the
5 Commission would adopt rules setting forth a Capacity Valuation Methodology.

6 Staff does not necessarily intend that UM 2011 will end with consensus. However,
7 participants in UM 2011 will have had opportunity to provide input to the Staff in writing and
8 orally. Further, stakeholders will have the opportunity to comment directly to the Commission
9 regarding Staff's proposed draft rules, first in response to a Staff recommendation to open a
10 rulemaking proceeding and thereafter in the actual rulemaking proceeding.

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12 DATED this 21st day of January, 2021.

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Respectfully submitted,

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ELLEN F. ROSENBLUM
Attorney General

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/s/ Stephanie Andrus

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Stephanie Andrus, OSB No. 925123
Assistant Attorney General
Of Attorneys for Staff of the Public Utility
Commission of Oregon

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