Sanger Law PC
1117 SE 53rd Ave. Portland, OR 97215 tel (503) 756-7533 fax (503) 334-2235 irion@sanger-law.com

December 28, 2015

Via Email

Commission Chair Susan Ackerman
Commissioner John Savage
Commissioner Steve Bloom
Oregon Public Utility Commission
201 High St SE, Suite 100
Salem, Oregon 97301

RE: In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Revised Schedule 201 Qualifying Facility Information, Consistent with the 2013 Integrated Resource Plan Update
Docket No. UM 1752

Dear Commissioners:

The Renewable Energy Coalition (the "Coalition") submits these comments strongly recommending that the Oregon Public Utility Commission (the "Commission") reject Portland General Electric Company's ("PGE") filing because it is an out-of-cycle avoided cost rate update that violates Commission policies, including the recent orders in 2014 and 2015. The Commission allows frequent rate updates to ensure that Public Utility Regulatory Policies Act ("PURPA") qualifying facilities ("QF") are accurately compensated, <u>and</u> provide consistency and predictability in contract negotiations. These include update filings on an annual basis, after the <u>acknowledgement</u> of an integrated resource plan ("IRP"), and after a major change in circumstances, like the acquisition of a new major resource. The Commission does not allow and should not allow a rate change after the <u>filing</u> of an integrated resource plan ("IRP") or IRP update.

This is not the first attempted out-of-cycle avoided cost rate update. Unless the utilities are penalized or their behavior otherwise stopped, they will continue to ignore the Commission's directions, waste resources, and harm QFs and customers. The Commission should explicitly recognize that the utilities are not concerned with protecting customers, but want to put their small competitors out of business. Filing out-of-cycle updates and upsetting the contract formation process is a key component of the utilities' efforts to create an unsettled institutional climate for QFs and reduce QF marketability. Attempts to abruptly change avoided cost rates harms ratepayers because utility customers are being forced to fund an effort that will ultimately reduce competition and increase power costs.

1. The Coalition Has Consistently Supported Regular, Yet Timely Rate Updates

The Coalition is comprised of over thirty members that are small QFs who own and operate about fifty non-intermittent projects in Oregon, Idaho, Utah, Washington, and Wyoming. Nearly all of the QFs are small hydroelectric projects less than 7 MWs. Several types of entities operate these projects, including non-profit irrigation, water, and other special service districts. These non-profits use their power sales revenues to lower water, irrigation, and garbage rates. They also directly re-invest in their depressed local Oregon communities, and often make significant environmental enhancements.

The Coalition and its members are extremely frustrated that QFs and their advocates participate in expensive and time-consuming proceedings that result in policies that the utilities ignore. Even when the utilities lose a specific unauthorized or illegal proposal, they win a larger war of attrition by eventually chipping away at PURPA. This constant PURPA litigation exhausts the human and financial resources of QFs.

The Coalition has consistently advocated for fair and balanced policies that allow frequent, but scheduled rate changes. Regardless of whether prices are increasing or decreasing, the Coalition has never supported an out-of-cycle update. In contrast, the Coalition is not aware of any utility voluntarily filing an out-of-cycle rate increase.

2. The Utilities' Should Not Be Permitted to Disregard Commission Policies, Including the Timing and Reason for Avoided Cost Rate Updates

The Commission's historic implementation of the timing of avoided cost updates has been inconsistent, and has apparently provided the utilities with confidence that inappropriate out-of-cycle updates will be allowed. If the Commission adopts and (more importantly) follows clear policies regarding rate updates, then utilities like PGE would not be as emboldened to ignore them. The Commission should take PGE's filing as an opportunity to send a message that its policies should be followed.

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, <u>plus</u> an additional update following the acknowledgement of the utility's IRP.[1] 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.[2] The standard for meeting this "significant change" is "very high."[3]

The erratic history of avoided cost updates illustrates why the Commission adopted a policy that includes annual updates at specific times along with strongly

1 <u>Re Staff Investigation Into Qualifying Facility Contracting and Pricing</u>, Docket No. UM 1610, Order No. 14-058 at 25-26 (Feb. 24, 2014).

2 OAR § 860-029-0080(8).

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

discouraging out-of-cycle updates. The Commission previously had a policy in name only of allowing the utilities to update their avoided cost rates every two years after IRP acknowledgement.[4] When the IRP cycle took longer than two years, the utilities updated rates every two years and after IRP acknowledgement. The Commission also exercised its discretion to allow a utility to separately update its rates within a two-year period.

From a practical perspective, this policy resulted in erratic and multiple avoided cost rate updates within most two-year periods.[5] For example, between 2005 and 2012, PacifiCorp updated its avoided cost rates in 2005, 2006, 2007 (twice), 2009, 2010 and 2012, Idaho Power updated its avoided costs in 2005, 2007 (twice), 2009, 2010, and 2012, and PGE changed its avoided cost rates four times in 2007.[6] Also, the Commission effectively allowed Idaho Power to file an early update when it limited the utility's obligation to enter into certain contracts based on concerns that the avoided costs were outdated.[7] There have been other more recent out-of-cycle of updates. In 2014, PGE updated its avoided cost rates due the completion of requests for proposals,[8] and all three utilities updated their avoided costs as part of their UM 1610 compliance filings.

While allowing out-of-cycle updates in some circumstances, the Commission also rejected others. In 2007, the Commission rejected a request by QFs to increase avoided cost rates after a dramatic increase in gas prices following hurricane Katrina. The Commission recognized that the facts of the situation "may warrant the updated avoided cost filings as contemplated by" its previous orders.[9] In other words, the Commission agreed that the avoided cost rates were inaccurate, but rejected the update. The Commission also rejected Idaho Power's early updates filed in 2011 and 2015.[10]

Overall, the Commission did not consistently apply its policy regarding whether avoided cost updates can be filed outside of the standard two-year cycle. This harmed QFs because they lowered avoided cost rates, and caused a lack of predictability in price changes, especially when there were ongoing contract negotiations. Knowing when rates

---

4 Re Staff Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 29 (May 13, 2005).

5 The out-of-cycle updates listed are not exhaustive of all updates that have been approved or requested.

6 Docket No. UM 1610, Exhibit Coalition/102, Lowe/1, 24, and 46.

7 Re Idaho Power, Docket No. UE 244, Order No. 12-042 (Feb. 14, 2012).

8 Re PGE Application to Update Schedule 201 Qualifying Facility Information, Docket No. UM 1664, Order No. 13-378 (Oct. 17, 2013).

9 UM 1129, Order No. 07-199 at 2 (May 22, 2007).

10 Re Idaho Power, Docket No. UE 241, Order No. 11-414 (Oct. 11, 2011); Re Idaho Power Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination, Docket No. UM 1725, Order No. 15-199 at 2-3, 6-9 (June 23, 2015).

change is one of the most important aspects of project development and continued operation because unforeseen avoided cost updates can prevent a QF from successfully completing a contract. For example, the utilities do not provide notice regarding unexpected (or even scheduled) updates. QFs typically only learn of an update after the utilities start raising new barriers, or stop or slow down negotiations in an effort to ensure that the QF is unable to complete their contract with the old rates.

Contract negotiations are more difficult when there are more frequent avoided cost rate updates; however, the Coalition supported annual updates in UM 1610 in the hope that they would ensure predictability and consistency when rates changed. Unpredictable updates inevitably lead to more complaints. Consistent avoided cost updates also help fulfill the Commission's mandate 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.[11]

In UM 1610, the Commission adopted its current process of annual updates and an update after IRP or IRP update <u>acknowledgment</u>.[12] 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 <u>acknowledged</u> IRP update relevant to the calculation of avoided costs.[13]

The Commission also concluded that out-of-cycle updates should be rare and more difficult to obtain stating it:

> [W]ill continue to allow requests for mid-cycle updates for significant changes to avoided cost prices. However, in light of our decision here to require annual updates in addition to updates following IRP <u>acknowledgement</u>, we caution stakeholders that the "significant change" required to warrant an out-of-cycle update <u>will be very high</u>.
>
> We expect the parties <u>to use this option infrequently</u>.[14]

---

[11] ORS § 758.515(3).

[12] UM 1610, Order No. 14-058 at 25-26 (the Commission may waive the IRP updates if it occurs within 60 days).

[13] <u>Id.</u> at 25-26 (emphasis in original).

[14] <u>Id.</u> (emphasis added).

In its first annual update following the Commission's order in UM 1610, PGE ignored the Commission's directions, and attempted to include items outside of the scope of allowable updates. After strong opposition, the Commission rejected PGE's proposal.[15] Despite losing its effort to include inappropriate items in its annual update, PGE's compliance filing nevertheless included impermissible updates, which needed to be corrected with a second compliance filing.[16] All of these attempts to circumvent the Commission's policies have occurred within about a year and half of the Commission's order in UM 1610 that should have been a long-term resolution of these precise issues.

3. PGE's Out-of-Cycle Update Violates the Commission's Policies and Will Make the Avoided Cost Update Process Unpredictable

PGE's proposal completely upsets the careful balance regarding avoided cost updates that the Commission recently adopted in UM 1610. First, PGE's filing is an inappropriate out-of-cycle update because it is not based on a significant change. IRP and IRP updates are frequently occur, and only warrant a rate change <u>after</u> they are acknowledged. Second, PGE can propose all of these changes if it simply follows the Commission's established process for making an annual update early next year and changing rates after IRP update acknowledgement. While any such changes will not be "immediate," they will be timely, quicker than in the past, and protect QFs from unpredictable rate changes.

PGE claims that it is filing a "significant change" due to several aspects of its December IRP update.[17] Specifically, PGE has made an update to its 2013 IRP, which includes changes to: 1) production tax credits; 2) thermal plant operational and capital costs; 3) use of banked renewable energy certificates ("RECs"); 4) financial and tax parameters; 5) contingency reserve costs; 6) shaping of renewable avoided costs; and 7) gas and electric price curves.[18] None of these changes have been reviewed or acknowledged by the Commission. These changes are not as significant as a full and complete IRP filing, the acquisition of a major block of resources, or the completion of a competitive bid. Finally, there may be other changes that warrant a price increase.

Two of these changes (production tax credits and price curves) should be made in an annual update, which should be filed on May 1, 2016. There is no need or allowable process to update these types of costs every six months. In addition, if the gas price

---

15 <u>Re PGE Application to Update Schedule 201 Qualifying Facility Information</u>, Docket No. UM 1728, Order No. 15-206 (June 23, 2015).

16 UM 1728, Order No. 15-251 (August 25, 2015).

17 <u>Re PGE Revised Schedule 201 Qualifying Facility Information, Consistent with the 2013 Integrated Resource Plan Update</u>, Docket No. UM 1752, PGE Filing Letter at 1-2 (Dec. 3, 2015).

18 <u>Id.</u>

changes associated with Hurricane Katrina were not significant enough to warrant an out-of-cycle update, then the price curve decreases at this time are not remotely "significant."

PGE's remaining changes should not be made in an out-of-cycle update because they are not part of an acknowledged IRP or IRP update. PGE supported, and the Commission specifically limited IRP-related updates to those actions or changes "in an acknowledged IRP update relevant to the calculation of avoided costs."[19] Utilities have discretion regarding what inputs and assumptions can be included in an IRP or IRP update, and there are no procedural safeguards unless inputs or assumptions are reviewed in a Commission proceeding.

The proper course of action when a utility files an IRP or IRP update is for the Commission to process it during the normal course of business. If the Commission accepts the mere filing of an IRP update as a "significant" change, then the utilities will file an out-of-cycle update every time a new IRP or IRP update reduces avoided cost rates. This would result price change "pancaking" with annual May 1 updates, updated avoided costs after an IRP or IRP update, and updated rates after the IRP or IRP update acknowledgement.

The Commission recently reaffirmed that rates will not change based on an unacknowledged IRP when it rejected Idaho Power's proposal to update its avoided costs early. While the factual situation was different, the Commission reaffirmed its policy regarding avoided cost updates and IRPs. The Commission explained that its "policy specifically requires an acknowledged IRP update to permit a change in a utility's resource sufficiency periods as part of an annual update."[20] This was the second time in a little over two years that the Commission had to re-emphasize that IRP-related avoided cost changes occur only after an acknowledged IRP.[21]

In addition, PGE's attempts to update its renewable resource sufficiency period based on the use of banked RECs should be carefully reviewed, as it may require a change in Commission policy. In 2011, the Commission addressed the issue of whether the purchase of RECs signals that a utility should be considered resource sufficient. The Commission rejected this approach concluding that it was:

> [N]ot persuaded that the utility purchase of unbundled RECs signals the start of a renewable resource deficiency period. A utility may purchase unbundled RECs for many reasons including speculation. In addition, as noted by

---

19 UM 1610, Order No. 14-058 at 24-26 (emphasis in original).

20 Re Idaho Power Application to Update Schedule 85 Qualifying Facility Information, Docket No. UM 1730, Order No. 15-263 at 4 (Sept. 4, 2015) (emphasis in original).

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

Pacific Power, a utility purchase of unbundled RECs is akin to its spot purchases of energy, and not necessarily indicative of its longer term plans.[22]

The converse may also be true. PGE's banking of RECs may not signal an extension of a renewable resource sufficiency period. For example, there is currently a proposed ballot measure to phase out coal and increase the Oregon renewable portfolio standard to 50% by 2040, and the Global Warming Commission recently unanimously recommended that the Oregon legislature adopt a carbon tax.[23] Increased REC banking may be related to plans or "speculation" regarding future renewable energy policies, and may actually signal that the renewable deficiency period should be moved up and not out.

The Commission should re-affirm its current policies that utilities can regularly update their avoided cost rates at specific times and for specific reasons, with only limited exceptions that do not apply here. PGE's filing presents the Commission with an excellent opportunity to make it abundantly clear that out-of-cycle updates should be rarely filed, and that the mere filing of either an IRP or IRP update does not warrant an immediate rate change.

4. PGE's IRP Update Changes Should Not Be Allowed to Go Into Effect Without a Comprehensive Review

While the Coalition strongly opposes updating avoided cost rates based on the filing of an IRP update, the proposed changes should be reviewed in some sort of adjudicatory process, if the Commission does not reject the filing out of hand. PGE's changes are numerous, may represent a change in policy regarding RECs, and are controversial. In addition, there may be other changes that would warrant increasing rather than decreasing avoided cost rates. Thus, the parties should be allowed to investigate and challenge inputs and assumptions before they are effective.

Idaho Power recently made two separate filings to update its rates related to the acquisition of demand response resources in: 1) a stand alone proceeding; and 2) part of its annual update.[24] The Commission rejected Idaho Power's request for an immediate update due to a potentially "significant change," and instead adopted a schedule to provide the parties with an opportunity to review the filing. The Commission concluded that the change should only occur after "a full evidentiary proceeding in that docket to decide that question."[25]

---

22 Re Investigation into determination of resource sufficiency, pursuant to Order No. 06-538, Docket No. UM 1396, Order No. 11-505 at 6 (Dec 13, 2011).

23 http://www.oregonlive.com/politics/index.ssf/2015/10/group_launches_ballot_measure.html; http://portlandtribune.com/pt/9-news/278804-153344-carbon-tax-could-help-hit-state-climate-goal

24 UM 1725, Order No. 15-199 at 2-3, 6-9; UM 1730, Order No. 15-263 at 4.

25 UM 1730, Order No. 15-263 at 4.

As a matter of Commission policy, the Coalition does not believe that the filing of an IRP or IRP update should ever constitute a "significant change." However, if the Commission disagrees, then the parties should be provided a full opportunity, including a full evidentiary proceeding, to evaluate PGE's claims.

4. The Commission Should Punish PGE For Filing an Out-of-Cycle Update

When adopting annual updates, the Commission stated that the standard for out-of-cycle updates would be "very high" and that it expected the parties to use this tool "infrequently." Despite this, all three Oregon utilities have filed early or out of cycle updates in little over a year.[26] This is anything but "infrequent."

Gas prices and avoided cost rates are at historic lows. In terms of dollars per megawatt hour, the actual changes from filing to filing are smaller than many changes in the past. There is no pressing reason to completely abandon the Commission's policies to allow an immediate avoided cost change based on a yet to be reviewed IRP update.

The Commission should not only reject PGE's filing, but should penalize the utilities for making these sorts of out-of-cycle updates. The mere fact that the utilities keep making these filings reduces the marketability of QFs and creates an unsettled institutional climate for QFs in Oregon. The Commission should consider a flat moratorium on out-of-cycle updates, or even disallowing as imprudent the utilities' costs associated with making inappropriate out-of-cycle updates.

The Coalition appreciates the opportunity to submit these comments and intends to make additional comments at the open meeting regarding PGE's filing.

Sincerely,

Irion Sanger

Irion A. Sanger

---

26 In addition to Idaho Power's request earlier this year and PGE's current filing, PacifiCorp filed an early update on April 10, 2014. UM 1610, Order No. 14-148 at Appendix at 1-2 (April 30, 2014).