BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1728

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<tr><td>In the Matter of

PORTLAND GENERAL ELECTRIC COMPANY,

Application to Update Schedule 201 Qualifying Facility Information</td><td>)
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I. INTRODUCTION AND SUMMARY

The Community Renewable Energy Association ("CREA") and the Renewable Energy Coalition ("Coalition") ("Joint QF Parties") file these comments regarding Portland General Electric Company's ("PGE's") application to update its Schedule 201 qualifying facility ("QF") information. As explained in more detail below, the Oregon Public Utility Commission's ("Commission" or "OPUC") policies unambiguously require PGE's May 1st rate update to include *all relevant Commission-acknowledged actions* in PGE's 2016 IRP Update, not just the elements of the IRP Update that reduce avoided cost rates. PGE proposes to include items from the 2016 IRP Update that result in a reduction to the avoided cost rates, which most significantly include the updated capital costs of a major wind facility. But PGE ignores the 2016 IRP Update's inclusion of the recently acknowledged major renewable resource acquisition that PGE is undertaking at this time. The Commission assumed a renewable deficiency date of 2025

after it partially acknowledged the 2016 IRP last summer, and the currently effective avoided cost rates thus use that 2025 renewable deficiency date.

The 2016 IRP Update, however, includes a major renewable resource acquisition date of 2021, which is a Commission-acknowledged resource action different from the acknowledged resource actions at the time the currently effective rates were set. This renewable resource will meet the Company's energy, capacity and renewable portfolio standard (RPS") requirements and will provide renewable energy certificates that PGE can use for future RPS needs and/or sell in the market. Even more important, PGE is actively participating in a process to acquire a new major renewable resource with a preferred commercial operation date no later than December 31, 2020. Therefore, the Joint QF Parties request that the Commission require PGE to revise its renewable avoided cost rates to properly reflect a renewable deficiency date of 2021, consistent with PGE's recently acknowledged resource actions.

II. COMMENTS

A. Regulatory Background and Legal Standards

Congress enacted the Public Utility Regulatory Policies Act of 1978 ("PURPA") to address the energy crises of the 1970s, and Section 210 of PURPA remains the only federal law that directly mandates the purchase of renewable and cogenerated electric energy by monopoly electric utilities. In effect, PURPA is the nation's bare minimum renewable energy standard.

Although Oregon has its own renewable portfolio standard ("RPS"), PURPA still has significant importance in Oregon. Oregon's regulated electric utilities generally

procure large-scale renewable energy facilities of at least 100 MW in capacity, but Oregon's RPS law declares that "community-based renewable energy projects . . . are an essential element of this state's energy future." ORS 469A.210(1). It further mandates that "by the year 2025, at least eight percent of the aggregate electrical capacity of all electric companies that make sales of electricity to 25,000 or more retail electricity consumers in this state must be composed of electricity generated by . . . (a) [s]mall-scale renewable energy projects with a generating capacity of 20 megawatts or less that generate electricity utilizing" an RPS-eligible renewable resource, "or (b) [f]acilities that generate electricity using biomass that also generate thermal energy for a secondary purpose." ORS 469A.210(2). Yet PURPA is the only policy the Commission implements that might result in eight percent of electric capacity being supplied by such community-based renewable facilities by 2025. For such small facilities, PURPA is as important today as it was in 1978.

In enacting PURPA, Congress found traditional electric utilities, as lone buyers of electric energy in a market with many potential producers, "were reluctant to purchase power from . . . nontraditional facilities." *FERC v. Mississippi*, 456 US 742, 750 (1982). Indeed, as this Commission has itself found, investor-owned electric utilities are reluctant to purchase any long-term generation that cannot be placed in the utility rate base to earn a return for utility shareholders. Thus, to overcome this reluctance, PURPA directed the Federal Energy Regulatory Commission ("FERC") to promulgate regulations "to *encourage* cogeneration and small power production" including regulations that "require

electric utilities to offer to . . . purchase electric energy from such facilities[,]" which are known as "qualifying facilities" or "QFs." 16 USC § 824a-3(a) (emph. added).

PURPA requires each state regulatory authority to implement these FERC regulations for each electric utility for which it has ratemaking authority. 16 USC § 824a-3(f). Thus, if a state chooses to regulate certain electric utilities, its state regulatory authority must implement FERC's PURPA regulations for such utilities. *Mississippi*, 456 US at 751, 759-61. Oregon law requires the Commission to implement these requirements for Oregon's regulated electric utilities. ORS 758.505 *et seq.*

At issue here is FERC's regulation mandating that utilities pay QFs a price set at the utility's "full avoided cost." *Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.,* 461 US 402, 406, 413-17 (1983); *see also* 18 CFR §§ 292.101(b)(6), 292.304(b). Avoided costs are "the incremental cost to an electric utility of electric energy or energy and capacity that the utility would generate itself or purchase from another source but for the purchase from a qualifying facility." ORS 758.505(1). Consistent with federal law, Oregon law mandates that the "price for such purchase shall not be less than the utility's avoided cost." ORS 758.525(2). Oregon law also requires the Commission to follow state policies, which are to increase the marketability of QFs and to create a settled and uniform institutional climate for Oregon QFs. ORS 758.515(3).

The Commission requires utilities to offer all QFs an avoided cost rate that is calculated based on the costs of the next major resource (in excess of 100 MW) planned in the utility's acknowledged Integrated Resource Plan ("IRP"), which is typically a gas-fired plant. *Re Investigation Relating to Elec. Util. Purchases from QFs*, Docket No. UM

1129, Order No. 05-584 at 26-29 (May 13, 2005). During periods of resource sufficiency prior to the planned acquisition of the major resource, the utility pays the QF the forecasted prices for short-term market electricity sales. *Id.* Additionally, for QFs that are qualified as RPS-eligible facilities under Oregon law, the Commission requires the additional option for such QFs to sell both their electrical output and their renewable energy credits ("RECs") to PGE or PacifiCorp in exchange for renewable avoided cost rates calculated based on the costs of the next major renewable resource the utility will acquire. *In the Matter of Pub. Util. Comm'n of Or., Investigation Into Resource Sufficiency Pursuant to Order No. 06-538*, Docket No. UM 1396, Order No. 11-505 at 1-2, 4-5 (Dec. 13, 2011).

The starting place for the review of avoided cost rates is the purchasing utility's acknowledged IRP. The utility's avoided cost rates should include "inputs and assumptions taken from IRPs that are subject to stakeholder review," including gas price forecasts, capital costs, wind capacity factors, and the resource sufficiency-deficiency demarcation. *See Re Commission Investigation Into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014). The Commission therefore approves a major avoided cost update after acknowledgement of each utility's IRP, which typically occurs every two years. *Id.* at 23-25.

However, the IRP is not itself a litigated proceeding where the Commission resolves disputes over the critical inputs to the avoided costs. Thus, where, as here, the utility's filing relies on changes made in a recently acknowledged IRP or IRP Update, Staff and QFs may challenge the utility's proposed use of (or failure to properly use) IRP

data in calculating its avoided cost rates. *See Re Investigation Relating to Elec. Util. Purchases from QFs*, Order No. 05-584 at 36-37; *Re Investigation Relating to Elec. Util. Purchases from QFs*, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006). This right to challenge the utility's proposed use of the IRP to set rates makes good sense – otherwise, the utility would unilaterally set the rates it must pay its competitor QFs.[1]

In addition to the complete avoided cost update after acknowledgement of an IRP, the Commission has also adopted a "requirement for an annual update on a specific day each year[.]" *Re Commission Investigation Into QF Contracting and Pricing*, Order No. 14-058 at 25. Unlike the "complete avoided cost update" occurring after IRP acknowledgement, the Commission specifically limited these annual updates to: "(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 *acknowledged* IRP update relevant to the calculation of avoided costs." *Id.* at 25-26 (emph. in order). However, and importantly, the Commission mandated that

[1] The Commission has repeatedly made it clear that stakeholders can challenge a utility's avoided cost update filing at the time that the rates are filed. The Commission will consider the rate filing at a Public Meeting, and then decide to allow them to go into effect as filed or with changes, and/or suspend them for further investigation. *Re Commission Investigation Into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 14 (May 13, 2016) ("We agree with Staff that there is value in the sequential nature of reviewing avoided costs after acknowledgment of a utility's IRP and, therefore, decline any proposals to institute concurrent or simultaneous processes" like, for example, the Coalition's recommendation to "create a separate proceeding to run concurrent with a utility's IRP to review the inputs and assumptions used in the calculation of avoided cost"); *Re Commission Investigation Into QF Contracting and Pricing*, Staff's Reply Testimony of B Andrus at Staff/700, Andrus/4-5 (May 13, 2016) (confirming "status quo" provides the ability to challenge inputs and assumptions taken from the IRP during the avoided cost filing review). The Commission has encouraged parties to seek suspension of an avoided cost filing to address concerns about "any aspect" of the utility's avoided cost update filing. *Re Investigation Relating to Elec. Util. Purchases from QFs*, Order No. 06-538 at 44.

these four changes “will” be made each year, regardless of whether the overall rate impact is to lower or raise the avoided cost rates. *See id.* This annual update is to be filed on May 1st each year.

In any rate filing, the utility has the burden of proof to demonstrate that the factual inputs and assumptions for its avoided cost rates are just and reasonable. The utility is charged with the statutory responsibility to “prepare, publish and file” its avoided cost prices, which “shall be reviewed and approved by the commission.” ORS 758.525(1). The Commission’s administrative rules specifically state that the utility “has the burden of supporting and justifying” the underlying avoided cost data. OAR 860-029-0080(1)&(4). Placing the burden of proof on the party that developed the information is consistent with administrative legal principles, which almost universally place the burden of proof on the movant or proponent. ORS 757.210; 5 USC § 556(d); 16 USC § 824d(e).

Likewise, the Commission’s rules specifically state that “[s]tandard rates for purchases shall be implemented . . . [i]n the same manner as rates are published for electricity sales . . . .” OAR 860-029-0040(4); *see also* OAR 860-029-0080(6) (stating proposed avoided cost rates “shall be subject to suspension and modification by the Commission.”); *Re Investigation Relating to Elec. Util. Purchases from QFs*, Order No. 05-584 at 36-37 (stating same rule). Thus, the Commission’s rules require that interested parties have the opportunity to submit evidence responding to the reasonableness of the utility’s proposed avoided cost rates.

B. PGE's Proposed Renewable Deficiency Date Should Be Changed to 2021

In this May 1st Update, the Commission should require immediate correction to PGE's proposed renewable resource deficiency date. Based on the Commission's administratively determined methodology, the date of demarcation between resource sufficiency and deficiency is the most critical element of setting avoided cost rates because QFs are only paid short-term market electric prices during the sufficiency period. The Commission has unambiguously stated that the "[t]he IRP Action Plan should be used to identify when a renewable resource acquisition could be avoided." *See In the Matter of Pub. Util. Comm'n of Or., Investigation Into Resource Sufficiency Pursuant to Order No. 06-538*, Order No. 11-505 at 1; *see also id*. at 6 ("The IRP preferred portfolio and Action Plan provide the basis for deciding when a renewable resource would be avoided by QF purchases"). In this case, however, PGE inappropriately proposes to short-change QFs by using a renewable deficiency date of 2025 for QFs even though PGE's recently updated IRP Action Plan includes a Commission-acknowledged renewable resource acquisition by 2021.

As noted above, the Commission has expressly mandated that the "Annual updates, filed every May 1, *will include* . . . four factors." *Re Commission Investigation Into QF Contracting and Pricing*, Order No. 14-058 at 25-26 (emph. added). In addition to natural gas prices, market electric prices and changes in the production tax credit, the fourth factor is "[a]ny other action or change in an *acknowledged* IRP update relevant to the calculation of avoided costs." *Id.* (emph. in order). Although PGE implemented the elements of the May 1st annual update that lower the rates, PGE's proposal ignores a

major action or change included in PGE's 2016 IRP Update that increases PGE's renewable avoided costs. Specifically, PGE proposes to update the capital costs and capacity contributions of the avoidable renewable plant consistent with PGE's 2016 IRP Update, which results in lower rate inputs.[2] But instead of also updating the renewable resource deficiency period starting in 2021 consistent with PGE's Commission-acknowledged Action Plan, PGE's proposed avoided cost rates pretend that PGE will not acquire another major renewable resource until 2025. As explained below, there has unquestionably been a change to the IRP Action Plan since approval of the currently effective rates.

The current avoided cost rates were approved in this docket in Order No. 17-347, issued on September 14, 2017. At that time, PGE had not received acknowledgement of the major renewable resource acquisition initially proposed in the 2016 IRP. Instead, at the August 8, 2016 public meeting on the 2016 IRP, the Commission rejected the acquisition of 175 aMW of renewable resources by 2020, but it did so without prejudice for PGE to propose acknowledgement of a smaller quantity of renewable resources. *In the Matter of Portland Gen. Elec. Co., 2016 Integrated Resource Plan*, Docket No. LC 66, Order No. 17-386 at 1-3, 10-16 (Oct. 9, 2017). PGE nevertheless wished to move forward with an update to its avoided costs without a fully acknowledged IRP Action

[2] On page 2 of its application, PGE explains its proposal as it regards the 2016 IRP Update as follows:

> *Any other action or change in an acknowledged IRP update:* PGE has revised the standard prices to reflect updated resource costs and operating parameters, carbon offset costs, financial parameters, and capacity contributions of incremental wind and solar resources as provided in the acknowledged 2016 IRP Update and described in Attachments A and B of this filing.

Plan because it believed the rates had become overpriced. Thus, for its avoided cost filing made on August 18, 2017, PGE proposed 2029 as the renewable deficiency date in the absence of an acknowledged renewable resource action. *See* Order No. 17-347 at App. A at p. 3. Because it did not have an acknowledged plan to acquire any renewable resources, PGE attempted to justify 2029 as the deficiency date on the ground that it expected to begin in incurring penalties under the RPS law in that year if it were not to acquire any new renewable resources.

However, PGE was still actively attempting to seek acknowledgement of a revised IRP Action Plan for a major renewable resource acquisition. In light of that fact, Staff went so far as to suggest that "[t]o the extent PGE or the Commission takes action in the future that impacts the start date of the next deficiency period, such actions may serve as a basis for an out-of-cycle update to avoided cost prices." *Id.* QF parties advocated for a much shorter renewable deficiency date in light of PGE's actual plans. *Id.* at App. A at 8. The Commission adopted the 2025 date as a compromise date in the face of imperfect information as to whether PGE could eventually make a convincing case for acknowledgement of a major renewable resource. *Id.* at 1; Recording of Public Meeting at 2:10 to 2:22:20 (Sept. 12, 2017).[3]

At the public meeting on September 12, 2017, Commissioner Megan Decker correctly explained that the renewable avoided cost order (Order No. 11-505) states that the deficiency date is derived from the IRP Action Plan. *Id.* Thus, with PGE's Action Plan still open for debate, 2025 was a reasonable date to use. *Id.* The motion for use of

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[3] Available at http://oregonpuc.granicus.com/MediaPlayer.php?view_id=1&clip_id=232.

2025 passed unanimously. *See id.* (discussing "pragmatic" approach without a final action plan on renewable acquisitions PGE was still developing). Furthermore, Commission Chair Lisa Hardie stated that if PGE were to further revise its Action Plan in the IRP for an earlier renewable acquisition, the Commission should again consider updating the avoided costs. *Id.* at 2:20:20 to 2:21:00.

The 2016 IRP Update now unambiguously contains the newly acknowledged renewable resource acquisition by 2021, and it is therefore an "action or change in an acknowledged IRP update relevant to the avoided costs." *Re Commission Investigation Into QF Contracting and Pricing*, Order No. 14-058 at 25-26. Specifically, the 2016 IRP Update explains:

> PGE's IRP addendum, filed in November 2017, revised the Company's 2016 IRP original renewables action plan and proposed to acquire approximately 100 MWa of renewable resources by 2021. *In Commission Order No. 18-044, the OPUC acknowledged (with conditions) PGE's revised action item to issue a Request for Proposals (RFP) for new renewable energy resources*.

In the Matter of Portland Gen. Elec. Co., 2016 Integrated Resource Plan, Docket No. LC 66, PGE's 2016 IRP Update at pp. 9-10 (Mar. 8, 2018) (emphasis added). As PGE agrees, the Commission indeed acknowledged the revised Action Plan for acquisition of 100 aMW of renewable resources on February 2, 2018. *In the Matter of Portland Gen. Elec. Co., 2016 Integrated Resource Plan*, Docket No. LC 66, Order No. 18-044 (Feb. 2, 2018). That alone would justify an out-of-cycle rate update, just as Commission Chair Hardie and Staff suggested might be appropriate last September.

But there is no need to debate the merits of an out-of-cycle update because, on March 1, 2018, the Commission also acknowledged the 2016 IRP Update, which

included the revised Action Plan for a major renewable resource by 2021. *In the Matter of Portland Gen. Elec. Co., 2016 Integrated Resource Plan*, Docket No. LC 66, Order No. 18-145 (Mar. 1, 2018). Thus, this May 1st avoided cost update must include a revised renewable deficiency date, because the new major resource acquisition is included in the updated 2016 IRP Action Plan and it is even included in the acknowledged 2016 IRP Update. Furthermore, to the extent there is any room for further debate, the acquisition of a major renewable resource is not a mere hypothetical possibility because PGE is actively engaged in a renewable RFP, which is under review in Docket No. UM 1934.

PGE may nevertheless argue that the 2025 deficiency date is reasonable because PGE believes the RECs from current resources are sufficient for compliance purposes until 2029, even without the major renewable resource it is currently acquiring. However, that is not consistent with the Commission's policy, which is based upon the next planned acquisition. Moreover, the factors leading to a least-cost resource acquisition for RPS compliance are far more complex than simply evaluating the date on which RPS penalties would start to be assessed without a resource action, particularly given the very low prices at which long-term renewable resources can be acquired at this time. Indeed, both of Oregon's investor-owned utilities with an RPS obligation are currently planning to acquire major renewable resources well ahead of the date penalties would be assessed due to a REC shortfall. PacifiCorp is currently moving forward with its plans to procure a new wind resource and a major transmission line in Wyoming despite its own sizeable REC bank, which will keep it REC-sufficient until 2028.

Notably, unlike PGE's proposal here, PacifiCorp has appropriately proposed to move its renewable sufficiency date up to 2020 in its parallel rate change proceeding to reflect its ongoing major renewable resource acquisition. *See* Docket No. UM 1729. There is no basis for different application of the same policy to PGE.

The Commission's rationale for adopting a separate renewable avoided cost rate was that a utility can have different resource needs, including requirements imposed by an RPS. *Re Pub. Comm'n of Or., Investigation into Resource Sufficiency Pursuant to Order No. 06-538*, Order No. 11-505 at 4. While this was the primary justification, the Commission did not base the renewable deficiency period on the next planned acquisition of RECs for RPS purposes or the timing of specific RPS requirements, but on the next planned renewable resource acquisition. *Id.* at 6-7. The Commission specifically rejected proposals by industrial customers and QF advocates to use state or federal RPS standards or REC purchases as the basis for renewable avoided cost rates. *Id.* In considering PacifiCorp's renewable rate, the Commission concluded:

> the company's acquisition of renewable resources is done on a system-wide basis and *driven by cost-effectiveness and risk mitigation*. Pacific Power states that it does not acquire renewable resources to meet any one state's RPS requirements.

Id. at 6. Thus, the renewable deficiency date is driven by the next least cost and least risk renewable resource acquisition, regardless of whether that renewable resource is necessary for RPS compliance.

Furthermore, the Commission's requirement that PGE sell excess RECs between now and 2025 supports acquisition of QF resources in favor of a utility-owned plant in the ongoing RFP. *See In the Matter of Portland Gen. Elec. Co., 2016 Integrated*

Resource Plan, Order No. 18-044 at 6 (acknowledging PGE's pledge to return the value of RECs to customers in the near term). Unlike RECs from PGE-owned generation, the RECs generated from a QF may be re-sold by PGE to a buyer to meet the buyer's bundled REC requirements because Oregon's RPS provides that unbundled RECs from QFs in Oregon do not count towards the 20-percent limitation on use of unbundled RECs in any compliance year. ORS 469A.145(3). In contrast, RECs from a PGE-owned resource would likely become unbundled, and thus less valuable, once sold to a buyer without the underlying energy. Thus, the RECs from QFs should receive a higher price than RECs from a PGE-owned resource if PGE elects to sell RECs in the near term.

Procedurally, this is not the proper time or place to consider whether acquisitions for renewable resources in advance of a utility's RPS requirements, i.e., economic acquisitions, should be treated differently than those acquired just in time to meet a utility's RPS needs. Instead, the Commission should simply recognize when PGE is planning to acquire its next renewable resource, or likely to acquire it, which is now.

Finally, the Commission would violate Oregon's requirement for community-based renewable energy projects if it were to allow the utilities to only offer small QFs sufficiency-period pricing while simultaneously acquiring major renewable resources. As noted above, that provision requires that by 2025 at least eight percent of PGE and PacifiCorp's electric capacity "must be composed" of electricity from small RPS-eligible facilities of 20 MW or less in capacity or certain biomass cogeneration facilities. ORS 469A.210(2). Once the ongoing renewable resource acquisitions are complete, the utilities will likely propose extremely low sufficiency-period pricing for at least the next

decade – thwarting the ability of many (or possibly any) small renewable facilities to sell their output to PGE or PacifiCorp. Absent implementation of substantial new policies, this may be the very last meaningful opportunity for small renewable facilities to contribute to PGE's RPS needs before the 2025 statutory deadline.

Therefore, consistent with PacifiCorp's proposal, PGE should also be required to conform its renewable deficiency date to its acknowledged IRP Action Plan by revising its renewable deficiency date to 2021.

III. CONCLUSION

For the reasons explained above, the Joint QF Parties request that the Commission require PGE to revise its renewable avoided cost rates to properly reflect a renewable deficiency date of 2021 consistent with PGE's recently acknowledged resource actions.

Dated this 11th day of May 2018.

Respectfully submitted,

/s/ *Gregory M. Adams*

Gregory M. Adams (OSB No. 101779)
Peter J. Richardson (OSB No. 066687)
RICHARDSON ADAMS, PLLC
515 North 27th Street
Boise, ID 83702
Telephone: 208-938-7900
Fax: 208-938-7901
greg@richardsonadams.com
peter@richardsonadams.com

Of Attorneys for the Community Renewable Energy Association

/s/ *Irion Sanger*

Irion Sanger
Sidney Villanueva
SANGER LAW, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com
sidney@sanger-law.com

Of Attorneys for the Renewable Energy Coalition