BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1728

In the Matter of	)	RENEWABLE ENERGY COALITION
	)	AND THE NORTHWEST,
PORTLAND GENERAL ELECTRIC	)	INTERMOUNTAIN POWER
COMPANY,	)	PRODUCERS COALITION AND
	)	COMMUNITY RENEWABLE ENERGY
Application to Update Schedule 201	)	ASSOCIATION'S JOINT RESPONSE
Qualifying Facility Information.	)	TO PORTLAND GENERAL ELECTRIC
	)	COMPANY'S SCHEDULE 201
	)	COMPLIANCE FILING AND MOTION
	)	FOR TEMPORARY RELIEF FROM
	)	SCHEDULE 201 PRICES

I. INTRODUCTION

Pursuant to OAR 860-001-0420(4), the Renewable Energy Coalition (the "Coalition"), the Northwest and Intermountain Power Producers Coalition ("NIPPC"), and Community Renewable Energy Association ("CREA") (collectively "Joint QF Parties") submit this response urging the Public Utility Commission of Oregon ("Commission") to deny Portland General Electric Company's ("PGE's") motion for temporary relief ("PGE's Motion") and require PGE to correct its application to update Schedule 201 qualifying facility ("QF") information ("PGE's Compliance Filing") to conform with the Commission's Integrated Resource Plan ("IRP") acknowledgement decision on August 8, 2017.

Procedurally, PGE requests retroactive rate-setting that upsets settled expectations and due process rights of QF developers currently in the queue for PURPA contracts. PGE's procedural request to have the updated prices apply to all QFs who have not

obtained an executed contract or legally enforceable obligation by August 8, 2017—either by delaying its obligation to contract or making the updated avoided cost prices effective on that date. The Joint QF Parties strenuously object to retroactively effective rates. Most importantly, the Commission should specifically reject PGE's proposals: 1) to reduce its avoided cost rates retroactively or in less than 30 days; and/or 2) effectively suspend PGE's obligations under the Public Utility Regulatory Policies Act ("PURPA").

With regard to the substance of PGE's rate change proposal, PGE has made substantively flawed assumptions that undervalue its avoided costs, including sufficiency periods that are longer than justified, the inclusion of an unsubstantiated solar integration charge, and too low of solar capacity contribution payments.[1] There is an inadequate record to approve either of those components of the proposed rates, and therefore the Commission should not approve them. The Joint QF Parties recommend that the Commission should either: 1) adopt different rates that reflect more accurate inputs and assumptions; or 2) defer ruling of the substance of PGE's rates pending further investigation.[2]

As explained herein, PGE's filings are inconsistent with Oregon's renewable energy policies, the Commission's statutory obligations, the federal and state constitutions, state and federal PURPA regulations, previous Commission orders, and the

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1 The Joint QF Parties are still reviewing PGE's workpapers and may identify additional errors in the rate update filing.

2 PGE's Compliance Filing assumes resource sufficiency dates that simply were not part of the Commission's acknowledgment decision. PGE appears to have invented these numbers to suit its needs. As such, the Commission should direct PGE to amend its Compliance Filing to better reflect the Commission's actual decision.

Commission's decision to partially acknowledge PGE's IRP. Rather than provide PGE's shareholders retroactive relief from its PURPA obligations, the Commission should reiterate its existing policy of allowing rates to go into effect 30 days after filing or suspend them for investigation, and require PGE to conform with that policy. Denying PGE's Motion is a necessary step to reestablishing mandated uniformity and stability in an otherwise chaotic regulatory environment for QF developers. PGE has already received temporary relief from this Commission, will obtain an avoided cost rate decrease over a month earlier than the development community expected, and does not present a persuasive argument to allow any deviation from the Commission's rules for implementing new avoided cost updates.

A large number of complaints have been filed against PGE recently arguing that PGE is impermissibly seeking to prevent QFs from establishing legally enforceable obligations and is refusing to execute many pending and completed PPAs until the outcome of this matter is resolved. PGE's own filings (in this and other dockets) support these allegations. Up until a few months ago, QF developers had a reasonable expectation that PGE's avoided cost rates would change in October or November,[3] and began making business decisions accordingly. The Commission will upset those

[3] PGE's IRP was scheduled for acknowledgement on August 31, 2017, but IRPs were often acknowledged well past their scheduled date. In past years, the IRP was discussed at a public meeting, but the order would not come out for weeks or months later. This year, PGE's IRP was ruled upon and made effective at the August 8, 2017 public meeting, almost three weeks earlier than expected. Instead of waiting 30 days to file their avoided cost rate update, PGE filed a week and half after the Commission partially acknowledged the IRP. This has significantly reduced the amount of time in which the Commission will issue an order regarding PGE's rates, even if they are made effective 30 days after PGE's rate filing.

expectations even with a rate change in mid-September, and should allow those QFs to complete their contract negotiations under the normal course of business, which is better served by reaffirming existing policy.

II. BACKGROUND

PGE made two filings on August 18, 2017: 1) PGE's Compliance Filing; and 2) PGE's Motion.[4] PGE's Compliance Filing mischaracterizes the relief requested in PGE's Motion, which makes it difficult to understand PGE's primary and alternative requests for relief. In sum, however, PGE is seeking to temporarily suspend PURPA by lowering the size threshold for standard contracts to 100 kilowatts ("kW") until new avoided cost prices become effective.[5] The practical result will be to freeze PURPA for all projects over 100 kW because PGE has stopped fully processing all its PPA requests over 100 kW, and it will not provide or execute any PPAs above that size until after the Commission rules on the Compliance Filing and Motion. Additionally, PGE is requesting a historically unprecedented change in avoided cost rates to become effective retroactively, which it did not tell the developers that it was negotiating with.[6]

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4 The background of issues in this update actually started with PGE's surprise filing proposing to lower the size threshold to 2 or 3 MWs and impose a permanent lifetime cap of 10 MW on standard contracts. For at least those projects it is negotiating with, PGE is obtaining to obtain similar overall relief and to prevent them from completing their negotiations.

5 PGE's Motion at 3.

6 While PGE telegraphed that it would make this change with a statement beginning on page 7 of its last round of IRP comments filed on August 4, 2017, the Joint QF Parties are unaware of PGE actually providing notice to any of the QFs it was negotiating with that it would make this request for a retroactive rate change. Re PGE 2016 IRP, Docket No. LC 66, PGE's Response to Staff's Report at 7-8 (Aug. 4, 2017).

PGE's Compliance filing requests an effective date of September 18, 2017, which PGE notes is "consistent with OAR 860-029-0040(4)(a) and the primary relief requested in PGE's Motion"[7] It continues, "[i]f the Commission denies the primary relief requested in the Motion but grants the alternative relief, the enclosed Scheduled 201 will have an effective date of August 8, 2017."[8] PGE claims, "[t]his filing changes prices only" and explains the later sufficiency dates and lower capital costs approved by the Commission's IRP acknowledgment are major drivers for the price changes.[9]

While PGE's Compliance Filing offers a simple rate change, PGE's Motion tells a different story. PGE's Motion begins by requesting the Commission "issue an order immediately relieving PGE of the obligation to offer or enter into power purchase agreements with [QFs] at prices based on the inaccurate avoided cost prices currently in effect under PGE's Schedule 201."[10] To be clear, PGE's Motion does not request (or even mention the possibility of) a normal September 18, 2017 compliance date.[11] Thus, PGE's Motion is not consistent with OAR 860-029-0040(4)(1), as PGE's Compliance Filing claims.

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7 PGE's Compliance Filing at 1.

8 Id.

9 Id.; see also id. at Attachment A ("The resource deficiency period for nonrenewable resources starts in 2025, consistent with the Commission's August 8, 2017 acknowledgment decision."); id. at Attachment B ("The resource deficiency period starts in 2029, consistent with the Commission's August 8, 2017 acknowledgment decision.").

10 PGE's Motion at 1.

11 Id. at 1-5, 19.

PGE's Motion explains that the updated avoided costs "reflect PGE's actual avoided costs more closely than the currently effective Schedule 201 prices."[12] According to PGE, this price differential could subject its ratepayers to upwards of $500 million dollars more than its "actual" avoided costs if every QF that has requested a power purchase agreement ("PPA") comes on line.[13] PGE therefore asks the Commission to "prevent this unnecessary and inappropriate harm to customers" by temporarily suspending PGE's obligation to offer standard contracts; but this time qualifies its request only applies to QF projects above 100 kW and until its updated prices become effective.[14] Alternatively, PGE requests the Commission issue a decision allowing that the prices filed on August 18, 2017 go into effect "immediately".[15] By immediately, however, PGE actually means retroactively, because PGE is not requesting that its avoided price costs go into effect on the date of the Commission's order, but rather on August 8, 2017.[16]

PGE claims that any QF that believes PGE's calculations are inaccurate are protected because they can still challenge the accuracy of PGE's avoided costs, even after

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12 Id. at 2 ("on a 15-year levelized basis, the newly proposed standard renewable prices for solar QF projects are $24.61 per megawatt hour ("MWh") or 38.4 percent *lower* than the currently effective Schedule 201 prices.").

13 This amount is presumably spread over 15 or 20 years and based on a comparison of non-renewable spot energy prices with the full in costs of a renewable resource. Under PGE's view of the actual avoided costs, its own generation resources that it has built and is proposing to build are hundreds of millions of dollars over its "actual avoided costs." The Joint QF Parties will not hold our breath for PGE to compare its actual generation costs with spot market purchases in future rate filings with a request for why PGE should not be allowed to recover its own costs that exceed market prices.

14 PGE's Motion at 3.

15 Id.

16 Id. at 5.

its updated prices become effective. PGE notes that any such QF "can forego entering into a new contract until [any such] investigation is complete."[17] This suggestion is tone deaf and demonstrates what it is like to negotiate even a standard PPA with PGE. It is also inconsistent with Commission policy. QFs that believe PGE's calculation is inaccurate should neither be forced to contract with inaccurate pricing, nor simply hope for corrective action from the Commission, which may never materialize.[18] The Commission has a process for implementing new rates, which QFs rely upon when making their business investments and decisions.

III. RESPONSE

A. PGE's Motion is Inconsistent with the Commission's Statutory Obligation to Create a Settled and Uniform Market for QF Development

The Commission is statutorily required to implement policies that will "[i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state" and "[c]reate a settled and uniform institutional climate for qualifying facilities in Oregon."[19] The Commission therefore adopted a specific process to provide predictability in setting avoided cost rates "to allow a potential developer or investor to easily evaluate the economic feasibility of a project."[20] The Commission explained, "[t]his process helps ensure that avoided costs are just and reasonable to the QF and the

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17 Id. at 4.

18 While the Commission has expeditiously granted relief to utilities to relieve them of their obligations to purchase power from QFs, the Commission has generally moved at glacial speed or failed to even issue final orders when QFs have requested changes in rates or challenged avoided cost rates as being too low.

19 ORS 758.515(3).

20 Re Investigation to Determine if Pacific Power's Rate Revision is Consistent with the Methodologies and Calculations Requires by Order No. 05-584, Docket No. UM 1442, Order No. 09-427 at 3 (Oct. 28, 2009).

ratepayers of the public utility, and provides certainty to developers by allowing an expeditious review and updates of avoided cost rates."[21] PGE is seeking relief that would undoubtedly decrease the marketability of QF energy and further upset an already disrupted institutional climate for QFs in Oregon. In addition, the plain meaning of Oregon's mini-PURPA proscribes that the Commission must review and approve avoided cost rates before they go into effect. Thus, PGE's Motion is inconsistent with Oregon law and policy.

Although the Commission has acknowledged that it has a statutory role implementing PURPA that requires it to balance the interests of QF developers in Oregon against those of its ratepayers[22], PGE's Motion tips that balance too far to the utility's side.[23] The Commission has already taken significant actions to limit PURPA for PGE, including temporarily lowering the solar standard size eligibility, allowing the surprise avoided cost rate decrease to go into effect in June, and the likely approval of PGE's new and lower prices at least a month earlier than the industry expected. The Commission

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21 Id. at 3-4.

22 See Re Idaho Power Company, Applications to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Change, and for Change in Resource Sufficiency Determination, Docket No. UM 1725, Order No. 15-199 (June 23, 2015).

23 The actual balance at issue is the interests of non-utility owned generation against utility owned generation. Ratepayers have experienced billions of dollars in savings due to the passage of PURPA, which is the only federal statute that mandates competition in the power sector. Wholesale competition, which would not exist but for PURPA and QFs, has driven down power prices, which can be seen today in low wholesale power prices, dramatic declines in the costs to build renewable resources, and the very low prices for renewable energy certificates. None of this would have or would be occurring without a healthy competitive market and the ability of non-utilities to bring their capital to the Northwest, which often can only occur through PURPA.

should not risk overcorrecting with PGE as it did when it allowed PacifiCorp to stop PURPA development in its service territory. There is only so much the Commission can do without effectively killing PURPA development for both PGE and PacifiCorp.

PGE claims that it is acting on behalf of its ratepayers, but the result of PGE's actions will harm competition. One simple fact cannot be overlooked: PGE's own IRP called for a new renewable resource acquisition, and for purely economic reasons.[24] Thus, PGE also wants to build new renewable resources right now. And because the Commission did not (or is yet to) acknowledge that acquisition, PGE pushed its resource sufficiency date out to 2029, which in turn substantially lowered PGE's avoided cost rates.[25] Thus PGE wants to, and everybody knows it will, acquire at least some renewables before 2029 and the key long-term question is who will build and own those resources.

PGE also notes that solar prices are dropping, but that should be irrelevant because PGE's avoided prices are based upon a wind proxy plant. If QFs (of any resource type) can beat PGE's avoided cost price of the least-cost alternative, as identified in the PGE's IRP, then the Commission should be encouraging new PURPA development rather than assisting PGE with its anti-competitive agenda. PURPA will then work exactly as intended: ratepayers obtain access to wholesale electricity at the utility's costs and the competitive market drives down prices for future acquisitions.

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24 Re PGE 2016 IRP, Docket No. LC 66, PGE's IRP at 340-45.

25 PGE's Compliance Filing at Attachment B. As explained below, the 2029 date is inaccurate as PGE is likely to acquire new renewable resource much earlier, and is in active discussions to recommend a "layered" approach to allow to own new generation in 2021.

All of the recent QF filings demonstrate the need for Commission action to create a settled and uniform institutional climate for QFs in Oregon. PacifiCorp's rates are too low and are causing developers to try and sell to PGE instead. PGE is refusing to negotiate in good faith, and is seeking to avoid its PURPA obligations. PGE has simply stopped following its Schedule 201 process and is waiting for a regulatory solution to come before it incurs too many legally enforceable obligations.[26] Denying PGE's Motion's, and requiring PGE to wait the normal 30 days before lowering its avoided costs, could send a message to PGE to at least allow some projects to complete their stalled negotiations. PGE should not be rewarded for these actions.

B. PGE's Request for Retroactive Relief Violates Due Process and the Filed Rate Doctrine

The plain meaning of Oregon's mini-PURPA laws require utilities to file avoided cost rate schedules prospectively. Pursuant to the statute, utilities must file "a schedule of avoided costs equaling the utility's *forecasted* incremental cost" and those prices "shall be reviewed and approved by the commission."[27] Read plainly, this statute contemplates that new avoided cost rates will be filed prospectively, reviewed and then approved before they become effective. For at least the period between August 8 to August 18, PGE's Schedule 201 would not be forecasted. And PGE's request for retroactive

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[26] See PGE's Motion at 4 ("PGE requests that the Commission issue an order granting such relief as the Commission deems appropriate to prevent QF projects from qualifying for long-term contracts or legally enforceable obligations at the currently effective but substantially inaccurate Schedule 201 prices."); id. at 10 ("The Commission does not have to allow QF projects with pending requests for contract to secure contracts or establish legally enforceable obligations at current Schedule 201 prices").

[27] ORS 758.525(1) (emphasis added).

implementation means the Commission cannot review and approve the rates before they go into effect. Thus, PGE's request is inconsistent with the plain meaning of the statute.

The Commission has already determined that it cannot retroactively adjust avoided cost rates, which in turn means that PGE cannot request retroactive effect (back to the IRP acknowledgment date). According to the Commission's policy, avoided cost rates that are allowed to go into effect are not subject to refund.[28] This means that QFs have no remedy for any incorrect avoided cost payments made, in the event that those rates are later corrected. It also means that utilities have no such remedy.

In fact, when establishing the avoided cost rate update process, PGE argued that federal and state law precludes the Commission from conditionally approving, subject to refund, PURPA-related rates. This argument, made by PGE in another proceeding, stands for the proposition that PGE should not be permitted to make retroactive changes to its avoided cost rates in this proceeding. PGE pointed out that the Oregon Court of Appeals decided, "agencies and courts are without authority to put policy considerations into the meaning of statues in place of the words that the legislature has chosen to use."[29] PGE argued that Staff's policy considerations towards QFs were therefore inappropriate in light of the plain meaning of the statute. Applying PGE's argument to this case, means

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28 Re Public Utility Commission of Oregon, Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 05-1061 (Oct. 4, 2005).

29 Re Public Utility Commission of Oregon, Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Docket No. UM 1129, PGE's Opening Brief at 4 (citing Northwest Natural Gas Company v. Oregon Public Utility Commission, 195 Or. App. 547, 556, 99 P.3d 292, 297 (2004)) (Sep. 2, 2005).

that the Commission should make PGE's avoided cost rates effective 30 days from filing rather than subvert that rule in light of certain policy considerations regarding QFs.

This result is consistent with the Oregon rule against retroactive ratemaking and the filed rate doctrine. Although the Commission has determined that chapter 757 of the ORS does not apply to PURPA[30], it is worth noting that PGE's request is contrary to the founding principles of ratemaking, inconsistent with fundamental rules of fairness, and generally opposed by FERC.[31] PURPA specifically exempts QFs from being subject to utility-style regulation, and retroactive avoided cost modifications are inconsistent with PURPA's legally enforceable obligation provision. Thus, once a state commission establishes a utility's avoided cost rates, and a QF enters into a contract to provide power pursuant to that rate, the state commission's authority to reconsider, modify, or rescind that rate schedule for that QF no longer exists.

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30 Re Public Utility Commission of Oregon, Investigation to Determine if Pacific Power's Rate Revision Is Consistent With the Methodologies and Calculations Required by Order No. 05-584, Docket No. UM 1442, Order No. 09-427 (Oct. 28, 2009). The Joint QF Parties do not agree with the Commission's decision in Order No. 09-427, but are not arguing that the rule against retroactive ratemaking *requires* the Commission to deny PGE's Motion.

31 Dreyer v. Portland General Electric, Co., 341 Or. 262, 271 (2006) (holding that the general rule against retroactive ratemaking requires that utility rates may only be modified prospectively); ORS 757.225 ("No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect, or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in ORS 757.210 (Hearing to establish new schedules) or 757.220 (Notice of schedule changes required.)"); 18 CFR 292.304(d)(2) (the rates for energy and capacity provided pursuant to a legally enforceable obligation may be based on the avoided costs calculated at the time of delivery or when the obligation is incurred).

The Joint QF Parties cannot stress enough the problems created by a request for retroactive rate relief. Such requests create chaos in the period of time between the filing and the Commission's determination of when the rates become effective. It is also entirely unlawful to engage in retroactive changes without prior advance notice to all affected parties.

First, the filed-rate doctrine prohibits PGE from agreeing to any rate other than the filed-rate until that rate is changed.[32] It is well established that "the rationale underlying the filed rate doctrine applies whether the rate in question is approved by a federal or state agency."[33] The goals of this doctrine are "preservation of the agency's primary jurisdiction over the reasonableness of rates," "avoiding discriminatory pricing," and "rate predictability."[34] Under the doctrine, the only way to allow for retroactive rate change is if the Commission "*warns all parties involved*" of the potentially retroactive action it will take in the future.[35] For example, in an order issued in February 2011, the Idaho Public Utilities Commission made a change to its avoided cost rates retroactively effective to December 14, 2010, but it justified the retroactive change by the fact that it had provided an express order on December 3, 2010, notifying parties any changes in the rates would be made effective as of December 14, 2010.[36] In effect, the advance notice

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32 See generally Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 577, 69 L. Ed. 2d 856, 101 S. Ct. 2925 (1981).

33 H.J., Inc. v. Northwestern Bell Tel. Co., 954 F.2d 485, 494 (8th Cir. 2004).

34 Natural Gas Clearinghouse v. FERC, 965 F.2d 1066, 1075 (D.C. Cir.1992).

35 OXY USA, Inc. v. FERC, 64 F.3d 679, 699 (D.C. Cir.1995) (emphasis added).

36 Re Joint Petition of Idaho Power Company, Avista Corporation, and PacifiCorp, dba Rocky Mountain Power, to Address Avoided Cost Issues and to Adjust the Published Avoided Cost Rate Eligibility Cap, IPUC Case No. GNR-E-10-04, Order No. 32176 (Feb. 7, 2011).

"changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision."[37]

In this case, there is no advance warning to the affected QFs by any established Commission rule or policy. To the contrary, the Commission's express policy is that the rates do *not become* effective until 30 days after the utility's filing. Therefore, the retroactive rate would violate the filed-rate doctrine and related bars against retroactivity.

Additionally, PGE's proposal to make the new rates effective *prior* to the time that any party could actually comment on them would violate the Due Process Clause of the United States and Oregon Constitutions. Except in "extraordinary situations" where some valid governmental interest justifies the postponement of notice and hearing, due process requires an adversary proceeding before a person can be deprived of his property interest or a statutory entitlement.[38] "(I)t is no answer to say that, in his particular case, due process of law would have led to the same result because he had no adequate defense on the merits."[39] PURPA's published avoided cost rates are a government-created, statutory entitlement. The courts have unambiguously explained, "Section 210 of PURPA sets forth *the benefit to which QFs are entitled*. It creates a market for their energy by requiring that the FERC establish regulations that obligate public utilities to sell electric

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37 Natural Gas Clearinghouse, 965 F.2d at 1075 (internal quotation omitted).

38 Fuentes v. Shevin, 407 U.S. 67, 86, 90, 92 S.Ct. 1983, 1997, 1999 (1972); see also Southern California Edison Co. v. Lynch, 307 F.3d 794, 808 (9th Cir. 2002) (holding that a court's "expedited notice" did not violate due process rights of ratepayer advocacy group because notice allowed time for detailed briefing of rate issue before ruling).

39 Fuentes, 407 U.S. at 87, 92 S.Ct. at 1991 (internal quotation omitted).

energy to and purchase electric energy from QFs."[40] FERC "regulations address the purchase of energy by utilities, and the cost to be paid to the QF supplying the energy and guidelines for calculating such costs."[41] QFs pursuing the currently effective rates have an entitlement to those rates protected by the due process clause.

Here, QFs negotiating with PGE rely on the rates in effect at the time when they incur financial expenses in perfecting eligibility for contracts at those rates for their respective QFs. To retroactively change those rates would pull the rug out from under those QFs in a manner that plainly violates their due process rights.

C. PGE's Motion is Inconsistent with the Commission's PURPA Rules

The Commission has established rules that set out specific procedural requirements for updating a utility's standard rates for QFs, which are inconsistent with PGE's request. The Commission's regulations state that utilities must make a filing to update its rates within 30 days of Commission acknowledgment of its least-cost plan,[42] and that those updated rates "become effective 30 days after filing."[43] The Commission should re-affirm this policy and ensure that rates do not become effective until at least September 18, 2017.

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40 Freehold Cogeneration Associates, L.P. v. Board of Regulatory Comm'rs of the State of New Jersey, 44 F.3d 1178, 1191 (3rd Cir. 1995) (citing 16 U.S.C. § 824a-3(a)) (emphasis added).

41 Id.

42 Much has been made of the rule's requirement to file within 30 days, to the detriment of QF developers, and now it appears that PGE is attempting to undermine these procedural protections by circumventing another clause from the rule that prevents them from being effective for 30 days after filing.

43 OAR 860-029-0040(4)(a).

The Commission Staff has previously explained the Commission avoided cost rate update policy as:

> Under the Commission's current process, utilities file update[d] avoided cost rates within 30 days of IRP acknowledgment. Stakeholders and Staff then have the opportunity to seek suspension of the avoided cost prices to allow additional investigation into whether the prices comply with the Commission's methodologies for establishing avoided cost prices. If no party asks for additional investigation, the prices will become effective 30 days after the utility filed them.

PGE's motion explains in a footnote that pursuant to OAR 860-029-0040(4)(a) PGE is required to update its avoided cost prices within 30 days of IRP acknowledgment, and that "[u]nless otherwise directed by the Commission, updated prices are effective 30 days after they are filed."[44] This mischaracterizes OAR 860-029-0040(4)(a) by inserting "unless otherwise directed by the Commission" into the regulation. PGE's Motion ignores that PGE is requesting something that is contrary to a specific rule provision.

The Commission's rules do not include a specific waiver for an exception to this 30-day requirement, but instead include a generic provision allowing for waiver for any of the PURPA rules for good cause.[45] In contrast, the Commission has adopted specific policies for the waiver of numerous PURPA requirements, but the Joint QF Parties are unaware of any past waivers of the 30-day requirement that could provide any precedent to apply here. For example, the Commission has adopted a policy that allows for the waiver of a utility's need to file a post-IRP avoided cost update at all if avoided cost rates

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44 PGE's Motion at n.4.

45 OAR 860-029-0005(4).

were recently changed.[46] Specifically, "[i]n the event that an IRP is acknowledged within 60 days of May 1 in a particular year, the Commission will use its discretion at that time to direct a utility to waive its 30-day post IRP update."[47] This exception, like another cited by PGE[48] where PGE was allowed *not* to file an avoided cost update in 2015, simply do not apply. The Commission also allows early avoided cost rates "to reflect significant changes in circumstances".[49] PGE does not cite any analogous examples of rules or prior actions where the Commission allowed rates to become effective immediately let alone retroactively.

Instead, PGE revisits the Commission's admittedly erroneous decision to allow Idaho Power to suspend its obligations, suggesting that if the Commission slightly modify the relief it provided to Idaho Power it could comport with federal law.[50] PGE also suggests that QFs could just either negotiate a Schedule 202 contract or wait until the new prices go into effect to obtain a Schedule 201 contract. Negotiate a Schedule 202 contract effectively means stop a QF's contract negotiation process and start over, which has the same practical impact of ending that process. PGE is also essentially asking the Commission to interfere with a QF's ability to establish a legally enforceable obligation

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46 Re Public Utility Commission of Oregon, Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 25-26.

47 Id.

48 PGE's Motion at 6 (citing Order No. 15-009).

49 OAR 860-029-0080(7).

50 PGE's Motion at 12-13. The Commission subsequently recharacterized the relief it awarded to Idaho Power admitting that the relief that it had appeared to have granted violated PURPA. See Re Idaho Power Company, Applications to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Change, and for Change in Resource Sufficiency Determination, Docket No. UM 1725, Order No. 15-199 at 6, n.8 (June 23, 2015).

at the rates in effect at the time that obligation is incurred. PGE's analysis is not sound, and would further disrupt the QF market in Oregon by raising new legal issues.

PGE acknowledges QF developers' interests in a predictable, routine process for updating prices, and then seems to argue that PGE should be allowed to disrupt that process. PGE's Motion complains that PGE has been trying to get its inaccurate avoided costs updated for years and "has been told to complete the IRP process and obtain acknowledgment of its critical inputs before prices can be adjusted."[51] For example, PGE points to its 2015 compliance filing where the Commission required PGE to re-file its price update without adjustments to capital costs, which are not authorized as part of the annual price updates.[52] All PGE's Motion does is demonstrate PGE's historic refusal to act consistently with the IRP and post-IRP avoided cost rate processes, and is a persuasive reason to not grant another request from PGE to deviate from the Commission's rules.

D. PGE's Rate Update Contains Substantive Flaws That Undervalue the Avoided Costs of QF Generations

In addition to the procedural flaws with PGE's request for a retroactive rate update, PGE's compliance filing proposes rates with equally glaring substantive flaws. The procedural aspects of PGE's filing could easily distract the Commission from the thorough examination and consideration of the rates themselves, which should be the focus of this type of filing. The Joint QF Parties have initially identified three areas where the proposed rates are clearly flawed and must be changed to provide Oregon QFs

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51 PGE's Motion at 4 (citing Order No. 16-027 at Appendix A, page 5).

52 Id. at n.11.

the ability to sell at the full avoided costs: 1) the sufficiency periods are longer than justified; 2) the proposed solar integration charge unrealistically high and completely unsupported; and 3) the proposed solar capacity contribution is too low, based on PGE's own IRP.

1. The Commission Did Not Acknowledge the Deficiency Dates Used in PGE's Compliance Filing.

PGE's Compliance Filing updates its resource deficiency dates to 2025 for nonrenewable resources and to 2029 for renewable resources. This is curious because the Commission did not acknowledge specific deficiency dates for either resource type. In fact, the 2025 nonrenewable date was never addressed in either the Staff Report, or at the Public Meeting. Instead, PGE appears to have made that determination unilaterally based on the Commission's direction to conclude its bilateral negotiations and report back to the Commission before going forward with any capacity procurement. Similarly, the Commission never specifically acknowledge the 2029 renewable sufficiency date PGE's Compliance Filing relied upon, it simply rejected PGE's proposed 2020 date. PGE appears to have substituted the date that its renewable energy credit ("REC") bank becomes deficient, despite near unanimous agreement that PGE would procure a new renewable resource well before that date. Based on the Commission's administratively determined methodology, the dates of demarcation between resource sufficiency and deficiency is the most critical element of setting prices, and PGE is proposing a date based on the unacknowledged portion of an IRP. In other words, there is no Commission-acknowledged date in PGE's IRP, but only a date that the Commission did not acknowledge (i.e., 2020). Of all the options available, PGE picked a date that is 12

years out (2029), which means that QFs will only be paid a few years of capacity payments and a dozen years of low energy prices.

With respect to nonrenewable procurement, PGE's IRP called for an all-source RFP to meet its 2021 capacity need. Staff proposed acknowledgment of 561 MW of capacity *need* in 2021, but did not propose acknowledgement of a major resource acquisition—in 2025 or otherwise.[53] Importantly, Staff's report does not mention 2025. At the Public Meeting, the Commission stated that anything not discussed in the Staff Report was deemed accepted by the Commission. It did not state, however, that anything generally not addressed or discussed anywhere is up to PGE's unilateral determination. Yet, this appears to be what PGE has done. PGE's Response to Staff's Report, which also does not substantively address the 2025 date, happens to include an Appendix that summarizes Staff's Proposed Revisions to PGE's Action Plan and PGE's Proposed Final Action Plan that states, "[a]knowledge that PGE's capacity deficiency period begins in 2021, updating to 2025 following completion of bilateral negotiations and, if needed, a capacity RFP."[54] This means that PGE appears to be arguing for a 2021 deficiency period now, which would be updated to 2025, but only if PGE successfully completes its bi-lateral negotiations. Second, this kind of notation is not included in the Staff Report

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53 Re PGE 2016 IRP, Docket No. LC 66, Staff Report at 36 (Jul. 28, 2017) ("Staff recommends that the Commission acknowledge PGE's 2021 capacity need of up to 561 MW, but decline to acknowledge the issuance of an All Source RFP to fill the remaining capacity need until the following actions have been completed in the order listed below"); see also id. at 2, 5, 10, 17, 18, 27, 28, 29, 30, 31,32 and 34.

54 Re PGE 2016 IRP, Docket No. LC 66, PGE's Response to Staff's Report at Appendix A at 3 (Aug. 4, 2017).

and is insufficient to deem it part of the acknowledgment decision made by the Commission at the Public Meeting.

With respect to renewable procurement, PGE's IRP called for an RFP that would allow it to bring a new renewable resource on line in 2020 to utilize federal production tax credits. Staff proposed non-acknowledgment of a major renewable resource, because PGE did not have a regulatory compliance need until 2029. Worth noting, this is not the same thing as recommending acknowledgment of a 2029 deficiency date. The Staff Report did, however, separately recommend that the deficiency date be set at 2029 regardless of the Commission's decision on renewable procurement, to reflect the regulatory need as opposed to the need to serve load.[55]

Parties objected and this was discussed at the Public Meeting. Staff specifically walked-back its position, and agreed that setting the deficiency period based upon a regulatory need was a policy decision that should be made in another proceeding. There was near unanimous (if not unanimous) agreement that PGE would not wait until 2029 to make its next renewable resource acquisition. Even Staff, which advocated for waiting until the regulatory need was closer, agreed that waiting until non-compliance was imminent (a truly "just in time") would not be prudent.[56] Therefore, the only thing certain about the 2029 date is that it is a date *well after* PGE would acquire its next renewable resource if it were acting prudently. The renewable deficiency date should be

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55 Re PGE 2016 IRP, Docket No. LC 66, Staff Report at 51 (Jul. 28, 2017)

56 Compare Re PGE 2016 IRP, Docket No. LC 66, Staff Report for Public Meeting (Jul. 28, 2017) with Public Meeting, Staff Testimony (Aug. 8, 2017), available at http://www.puc.state.or.us/Pages/Live-Stream.aspx.

much sooner than 2029, and in the absence of any reasonable date proposed by PGE the Joint QF Parties propose 2024.

The Commission told PGE that its plan was not reasonable, but also invited PGE to come back with a revised plan that would allow it to take advantage of the PTCs. This means that although the Commission did not acknowledge PGE's specific plan, it also signaled that it would acknowledge some kind of smaller or more layered approach for a 2020 resource. Thus, the 2020 date is still in play, which makes a 2029 date even more unreasonable.

The Commission offered PGE the choice between accepting no action from the Commission (so it could bring a new revised renewable action plan back) and accepting a non-acknowledgment with a specific invitation to bring a new revised action plan back. This effectively allowed PGE to choose between: 1) maintaining its existing avoided cost rates and formally dragging out the IRP process; or 2) lowering its avoided cost rates and informally dragging out the IRP process. PGE chose the latter. The question is, what effect should this informal process have on PGE's avoided cost rates?

If PGE comes back with a new revised action plan that calls for a renewable resource acquisition that triggers the competitive bidding guidelines, it would presumably also trigger a new renewable sufficiency period, and new avoided cost rates for PGE. However, the procedural process for this is uncertain given the particular way the Commission made its decision. This is complicated by the fact that the decision was made at the public meeting, and an official order has not yet been issued to memorialize that decision. With so much uncertainty, PGE should not be permitted to rush updates

though that are not consistent with the Commission's actual decision, or the Commission's process for updating avoided costs.

Finally, it is important to note that utilities have never waited until immediately before facing penalties before meeting their RPS requirements. PGE's minimum REC bank strategy reflects this. PacifiCorp is also currently moving forward with its plans to procure a new wind resource in Wyoming despite its own sizeable REC bank, which will keep it REC-sufficient until 2028.

2. PGE's Proposed Solar Integration Charge Is Unreasonable and Unsupported

PGE has surreptitiously included a new solar integration charge in its Schedule 201 filing in direct contravention of standing Commission orders on the subject. In docket UM 1610, the utilities argued for the right to utilize a solar integration charge in standard avoided cost rates. However, the Commission explicitly rejected the proposal because the utilities had not presented any defensible evidence for such charge. In doing so, the Commission specifically relied upon CREA's argument that the "record contain[ed] no credible evidence that supports using wind integration as a proxy for solar integration.* * *"[57] The Commission has subsequently concluded that the utilities must each file their own solar integration study to implement a solar integration charge for QFs.[58]

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57 Re Public Utility Commission of Oregon, Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 15 n. 20 (quoting CREA's Post Hearing Brief) (Feb. 24, 2014).

58 Re Public Utility Commission of Oregon, Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 15-292 (Sep. 23, 2015).

When Idaho Power implemented a solar integration charge for QFs, it filed a specific application and testimony, supported by a comprehensive, peer-reviewed solar integration study, that supported the proposed charge, which was substantially lower than Idaho Power's wind integration charge.[59] The Commission's order directed changes to Idaho Power's proposed solar integration charge and directed Idaho Power to investigate specific issues to be included in its next solar and wind integration studies. However, the Commission has made it explicitly clear that PGE must follow a similar process to that followed by Idaho Power. The Commission stated: "PacifiCorp and PGE may also each file a solar integration study and application for a solar integration charge when ready to do so. We note, however, that despite different integration costs and studies, we expect consistency to emerge regarding methodologies used to calculate the solar integration charges."[60]

Amazingly, despite this unambiguous directive that PGE must support any proposed solar integration charge with a solar integration study, and a full process where interested parties can review such proposed study, PGE proposed in this emergency compliance filing to implement a new solar integration charge for QFs. This "proposal" is located on pages 4, 11, and 18 of PGE's proposed Schedule 201. One can only ascertain that this aspect of the rate schedule is new by reviewing the redline copy of

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59 Re Idaho Power Company, Application for Approval of Solar Integration Charge, Docket No. 1793, Order No. 17-075 (Mar. 02, 2017); see also Re Idaho Power Company, Application for Approval of Solar Integration Charge, Docket No. 1793, Order No. 17-223 (Jun. 26, 2017) (rejecting Idaho Power's request for clarifications of the order).

60 Re Public Utility Commission of Oregon, Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 15-292 (Sep. 23, 2015).

Schedule 201 attached to PGE's filing because PGE provided *no notice or explanation* regarding this new solar integration charge anywhere else in its voluminous filings for emergency rate change. Even more amazingly, there appears to be no study at all related to solar integration costs, and PGE has proposed to simply use the exact same rate for the wind integration charge as the basis for the solar integration charge. The two rates are identical. There is no substantive basis for the solar integration charge to be exactly equal to the wind integration charge. In other balancing authorities, the solar integration charge is typically a fraction of the wind integration charge. Absent a convincing solar integration study, PGE cannot include *any* solar integration charge in its rates. The Commission should reject this charge and admonish PGE for ignoring standing orders on how PGE must implement a solar integration charge.

This aspect of PGE's filing should raise alarm bells as the rest of the filing, and indeed everything PGE files related to PURPA. This error in PGE's filing was relatively easy to uncover because it appears on the face of the filing itself. But there are numerous other aspects of the rates that can only be uncovered as new or otherwise incorrect by thoroughly reviewed the work papers themselves. The emergency filing has provided insufficient time for such review. There could also be other changes PGE has not called out in the redline version of its tariff. Once approved, PGE will argue that the Commission consciously intended to create new PURPA policies, as it recently argued in its 15-years-from-effective-date standard contract term that is unique to PGE in docket UM 1805. PGE has attempted jam this filing through the Commission with little to no review, and make it retroactively effective, but the Commission should be very reluctant

to do so given PGE's apparently willingness to make major and unauthorized changes to the rate methodologies without providing any notice or explanation for such changes.

3. PGE Does Not Fully Compensate Solar QFs for Their Full Capacity Value

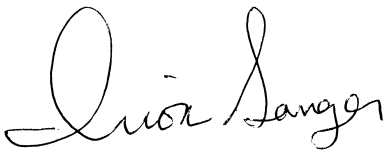
The Commission's avoided cost rates provide a capacity value for each resource technology's contribution to the utility's peak capacity needs. As baseload hydro, geothermal and biomass are more predictable, they provide a greater value to the utility's peak needs than wind and solar. Variable resources, however, provide some critical capacity value and the Commission has determined that they should be compensated for it. PGE's avoided cost rate filing specifically assume a 18.6% wind capacity contribution and a 15.3% solar capacity contribution. However, its IRP shows a solar capacity contribution of over 25%, which would more accurately reflect the predictable nature and contribution of solar generation. This may be a simple error, but regardless, the Commission should revise the avoided cost rate for solar generation to account for a more realistic estimate of its contribution to PGE's peak energy needs.

IV. CONCLUSION

For the reasons discussed above, the Joint QF Parties respectfully request the Commission deny PGE's motion for temporary relief and direct PGE to correct its application to update Schedule 201 prices, or suspend the filing for a more complete and thorough investigation. In addition, the Commission should make it clear to PGE that avoiding its PURPA obligations by refusing to complete negotiations and PPAs to the legally enforceable obligation threshold or withholding execution is unacceptable.

Dated this 6th day of September, 2017.

Respectfully submitted,



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